

02-760-CD.  
TIMOTHY J. FITZWATER etal -vs- CITY OF DUBOIS etal

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY M. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR,  
Plaintiffs

vs.

No. 02 - - C.D.

CITY OF DUBOIS, and  
ELEANOR G. GRAFF, her successors  
and/or assigns and all other  
persons claiming any interest in the  
described property,  
Defendants

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defense or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DAVID S. MEHOLICK, COURT ADMINISTRATOR  
Clearfield County Courthouse  
1 North Second Street  
Clearfield, PA 16830  
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER,  
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Defendants

COMPLAINT

AND NOW, comes the Plaintiffs, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY M. WAY, DANIEL LEE, EVA LEE, ALFRED WILLIAM WILSON, SHARON ELIZABETH WILSON, ROBERT CURLEY, JOHN E. FARR and CATHERINE E. FARR who file the within Complaint, averring as follows:

1. Plaintiff, TIMOTHY J. FITZWATER, is an adult individual, residing at 146 East Long Avenue, DuBois, Clearfield County, Pennsylvania 15801.

2. Plaintiff, LISA A. FITZWATER, is an adult individual, intermarried with Plaintiff, TIMOTHY J. FITZWATER, residing at 146 East Long Avenue, DuBois, Clearfield County, Pennsylvania 15801.



3. Plaintiff, JAY FAUST, is an adult individual, residing at 14 South Church Street, DuBois, Clearfield County, Pennsylvania 15801.

4. Plaintiff, SALLY FAUST, is an adult individual, intermarried with Plaintiff, JAY FAUST, residing at 14 South Church Street, DuBois, Clearfield County, Pennsylvania 15801.

5. Plaintiff, LAWRENCE L. WAY, is an adult individual, residing at 160 East Long Avenue, DuBois, Clearfield County, Pennsylvania 15801.

6. Plaintiff, AMY M. WAY, is an adult individual, intermarried with Plaintiff, LAWRENCE L. WAY, residing at 160 East Long Avenue, DuBois, Clearfield County, Pennsylvania 15801.

7. Plaintiff, DANIEL LEE, is an adult individual, residing at 206 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801.

8. Plaintiff, EVA LEE, is an adult individual, intermarried with Plaintiff, DANIEL LEE, residing at 206 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801.

9. Plaintiff, ALFRED WILLIAM WILSON, is an adult individual, residing at 129 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801.

10. Plaintiff, SHARON ELIZABETH WILSON is an adult individual, intermarried with Plaintiff, ALFRED WILLIAM WILSON, residing at 129 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801.

11. Plaintiff, ROBERT CURLEY, is an adult individual, residing at 144 East Long Avenue, DuBois, Clearfield County, Pennsylvania 15801.

12. Plaintiff, JOHN E. FARR, is an adult individual, residing at 138 East Long Avenue, DuBois, Clearfield County, Pennsylvania 15801.

13. Plaintiff, CATHERINE E. FARR, is an adult individual, intermarried with Plaintiff, JOHN E. FARR, residing at 138 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801.

14. Defendant, CITY OF DUBOIS, is a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with offices at 16 West Scribner Avenue, DuBois, Clearfield County, Pennsylvania.

15. Defendant, ELEANOR G. GRAFF, is an adult individual, whose previous address was 133 East Washington Avenue, DuBois, Clearfield County, Pennsylvania and whose current address is unknown but she is believed to be residing in the State of Indiana.

16. Plaintiffs, TIMOTHY J. FITZWATER and LISA A. FITZWATER, are owners of real property located at 146 East Long Avenue, DuBois, Clearfield County, Pennsylvania 15801.

17. Plaintiffs, JAY FAUST and SALLY FAUST, are owners of real property located at 14 South Church Street, DuBois, Clearfield County, Pennsylvania 15801.

18. Plaintiffs, LAWRENCE L. WAY and AMY M. WAY, are owners of real property located at 160 East Long Avenue, DuBois, Clearfield County, Pennsylvania 15801.

19. Plaintiffs, DANIEL LEE and EVA LEE, are owners of real property located at 206 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801.

20. Plaintiffs, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, are owners of real property located at 129 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801

21. Plaintiff, ROBERT CURLEY, is a tenant of the real property located at 144 East Long Avenue, DuBois, Clearfield County, Pennsylvania 15801.

22. Plaintiffs, JOHN E. FARR and CATHERINE E. FARR, are the owners of real property located at 138 East Long Avenue, DuBois, Clearfield County, Pennsylvania 15801.

23. Defendant, ELEANOR G. GRAFF, is the owner of real property located at 133, 133 ½ and 135 ½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, by virtue of a deed from James E. Ginter, Jr. and Jean K. Ginter to Stanley G. Graff and Eleanor G. Graff dated May 16, 1953 and recorded in the Office of the Recorder of Deeds of Clearfield County, Pennsylvania, in Deed Book No. 429, Page 70, more fully described therein. The said Stanley G. Graff died in the year 2001, and the property became vested in Defendant, ELEANOR G. GRAFF, by operation of law. A true and correct copy of the aforesaid deed is attached hereto and made a part hereof as Exhibit "A".

24. On the premises of Defendant, ELEANOR G. GRAFF, there exists a one (1) family detached dwelling and a two (2) family detached dwelling.

25. The one (1) family detached dwelling and the two (2) family detached dwelling of Defendant, ELEANOR G. GRAFF, are located on one (1) 50 x 150 lot which is zoned R-1 Residential District by Defendant, CITY OF DUBOIS, by Ordinance No. 1470, §801, which took effect on June 26, 1989.

26. The one (1) family detached dwelling and the two (2) family detached dwelling of Defendant, ELEANOR G. GRAFF, are non-conforming use properties under Ordinance No. 1470, §202, of Zoning Ordinance of Defendant, CITY OF DUBOIS, which took effect on June 26, 1989.

27. The premises of Plaintiffs are located directly in the neighborhood of the properties of Defendant, ELEANOR G. GRAFF, located at 133, 133 ½ and 135 ½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801.

28. The entire two (2) family detached dwelling, located at 133 ½ and 135 ½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, owned by Defendant, ELEANOR G. GRAFF, has been vacant and has ceased to house any families for a period in excess of four (4) years.

29. Defendant, ELEANOR G. GRAFF, discontinued any use of the two (2) family detached dwelling, located at 133 ½ and 135 ½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, for a period in excess of four (4) years.

30. The two (2) family detached dwelling of Defendant, ELEANOR G. GRAFF, located at 133 ½ and 135 ½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, had a water line break sometime turning the end of the year 1999.

31. The aforesaid water line break caused water to run into the premises located at 133 ½ and 135 ½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania, 15801, for a period of approximately three (3) months and consumed approximately seven hundred and fifty thousand (750,000) gallons of water.

32. Plaintiff, JAY FAUST, discovered the water line break by hearing the sound of rushing water and called the Police Department of Defendant, CITY OF DUBOIS.

33. When the authorities arrived at the two (2) family detached dwelling of Defendant, ELEANOR G. GRAFF, at least three (3) inches of water was discovered throughout both sides of the said premises, as well as a basement completely full of water.

34. The only repair made to the two (2) family detached dwelling of Defendant, ELEANOR G. GRAFF, since the water line break was repair of the actual broken water line.

35. The two (2) family detached dwelling of Defendant, ELEANOR G. GRAFF, located at 133 ½ and 135 ½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, had all of the utility meters removed immediately after the water line break.

36. Prior to the water line break at the end of the year 1999, the entire two (2) family detached dwelling, located at 133 ½ and 135 ½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, owned by Defendant, ELEANOR G. GRAFF, had been vacant and had ceased to house any families for a period in excess of one and one-half (1 ½) years.

37. Prior to the water line break at the end of the year 1999, Defendant, ELEANOR G. GRAFF, discontinued any use of the two (2) family detached dwelling, located at 133 ½ and 135 ½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, for a period in excess of one and one-half (1 ½) years.

38. The non-conforming use of the two (2) family detached dwelling of Defendant, ELEANOR G. GRAFF, has been abandoned pursuant to Ordinance No. 1470, §202, #6, of the Zoning Ordinance of Defendant, CITY OF DUBOIS, which took effect on June 26, 1989.

39. For a period in excess of four (4) years, Defendant, ELEANOR G. GRAFF, through her actions, has shown a settled purpose to abandon the non-conforming use of the two (2) family detached dwelling.

40. The properties of Defendant, ELEANOR G. GRAFF, are currently listed for sale and are under contract for sale with Medred Realty Associates of DuBois, Pennsylvania.

41. Medred Realty Associates have set forth in their advertisements for the properties of Defendant, ELEANOR G. GRAFF, "Also included in the sale is a two (2) bedroom duplex perfect for the buyer looking for a project and some additional income". A true and correct copy of said advertisement is attached hereto and made a part hereof as Exhibit "B".

42. On March 11, 2002, Plaintiff, LISA A. FITZWATER, learned that the premises of Defendant, ELEANOR G. GRAFF, are under contract for sale through Medred Realty and that the prospective Buyers intend to use the said property as a two (2) bedroom duplex pursuant to the advertisement with Medred Realty Associates.

43. Upon learning that the premises of Defendant, ELEANOR G. GRAFF, are under contract for sale through Medred Realty, Plaintiff, LISA A. FITZWATER, contacted Defendant, CITY OF DUBOIS, on March 11, 2002, and informed representatives of Defendant, CITY OF DUBOIS, that the property to be sold is in violation of the Zoning Ordinances of Defendant, CITY OF DUBOIS.

44. Defendant, CITY OF DUBOIS, has no appointed Zoning Officer, in direct violation of 53 P.S. §10614 and Ordinance No. 1470, §700, of the Zoning Ordinance of Defendant, CITY OF DUBOIS.

45. On March 14, 2002, Defendant, CITY OF DUBOIS, acknowledged that the non-conforming use of the (2) family detached dwelling of Defendant, ELEANOR G. GRAFF, had been abandoned, however, Defendant, CITY OF DUBOIS, has taken no action in the form of enforcement proceedings pursuant to 53 P.S. §10616.1 and Ordinance No. 1470, §704, of the Zoning Ordinance of Defendant, CITY OF DUBOIS.

46. Plaintiffs have no standing to request a Hearing before the Zoning Hearing Board of Defendant, CITY OF DUBOIS, pursuant to 53 P.S. §10601 and Ordinance No. 1470 of the Zoning Ordinance of Defendant, CITY OF DUBOIS.

47. By her actions, Defendant, ELEANOR G. GRAFF, indicated her intent to abandon the non-conforming use of the property located at 133 1/2 and 135 1/2 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801.

48. By her actions, Defendant, ELEANOR G. GRAFF, indicated actual abandonment of the non-conforming use of the property located at 133 1/2 and 135 1/2 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801.

49. Plaintiffs' properties and persons will be substantially affected by the zoning violation of Defendant, ELEANOR G. GRAFF, in that the area surrounding the zoning violation suffers from overcrowding of land, blight, danger and congestion in travel and transportation.

50. Plaintiffs' properties and persons will be substantially affected by the zoning violation of Defendant, ELEANOR G. GRAFF, by the potential loss of health, life or property from the said overcrowding of land, blight and the danger and congestion in travel and transportation.


51. The Zoning Ordinance of Defendant, CITY OF DUBOIS, was enacted to promote, protect and facilitate the public health, safety, morals and general welfare of the citizens of Defendant, CITY OF DUBOIS.

50. The Zoning Ordinance of Defendant, CITY OF DUBOIS, was designed to promote, protect and facilitate the proper density of population, the provisions of adequate light and air, vehicle parking, transportation, as well as preservation of the natural, scenic and historic values in the environment of Defendant, CITY OF DUBOIS.

WHEREFORE, Plaintiffs pray this Honorable Court:

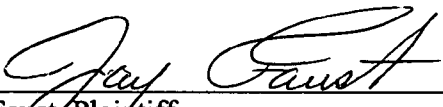
- (a) That an injunction may issue, preliminarily until final hearing and permanent thereafter, restraining Defendant, ELEANOR G. GRAFF, her successors and/or assigns and all other persons claiming any interest in the described property, from selling the premises located at 133 ½ and 135 ½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, as a two (2) family detached dwelling;
- (b) That Defendant, CITY OF DUBOIS, be ordered to immediately appoint a Zoning Officer pursuant to 53 P.S. §10614 and Ordinance No. 1470, §700;
- (c) That Defendant, CITY OF DUBOIS, be ordered to immediately initiate enforcement proceedings pursuant to 53 P.S. §10616.1 and Ordinance No. 1470, §704 against Defendant, ELEANOR G. GRAFF, her successors and/or assigns and all other persons claiming any interest in the described property;
- (d) Retain jurisdiction of this matter to ascertain that the Court's decree is obeyed; and
- (e) Such other relief as the Court may deem appropriate and just.


Respectfully submitted,


  
Timothy J. Fitzwater, Plaintiff


  
Lisa A. Fitzwater, Plaintiff




  
Jay Faust, Plaintiff

  
Sally Faust, Plaintiff

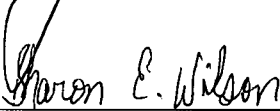
  
Lawrence L. Way, Plaintiff

  
Amy M. Way, Plaintiff

  
Daniel Lee, Plaintiff

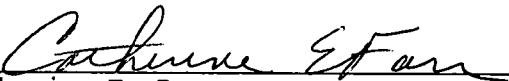
  
Eva Lee, Plaintiff

  
Alfred William Wilson, Plaintiff

  
Sharon Elizabeth Wilson, Plaintiff

  
Robert Curley, Plaintiff

  
John E. Farr, Plaintiff

  
Catherine E. Farr

COMMONWEALTH OF PENNSYLVANIA :  
: ss.  
COUNTY OF CLEARFIELD :

We, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY M. WAY, DANIEL LEE, EVA LEE, ALFRED <sup>JOHN E. FARR and</sup> <sup>CATHERINE E. FARR</sup> WILLIAM WILSON, SHARON ELIZABETH WILSON and ROBERT CURLEY, verify that the statements made in this Complaint are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: 3/24/02

Timothy J. Fitzwater  
Timothy J. Fitzwater

Date: 3/24/02

Lisa A. Fitzwater  
Lisa A. Fitzwater

Date: 3/23/02

Jay Faust  
Jay Faust

Date: 3/23/02

Sally Faust  
Sally Faust

Date: 3/24/02

Lawrence M. Way  
Lawrence M. Way

Date: 3/24/02

Amy L. Way  
Amy L. Way

Date: 3/23/02

Daniel Lee  
Daniel Lee

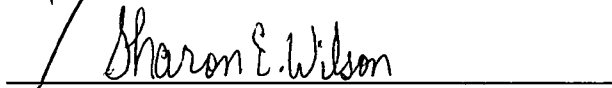
Date: 3/23/02

Eva Lee  
Eva Lee

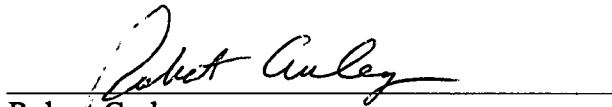
Date: 3/23/02

  
Alfred William Wilson

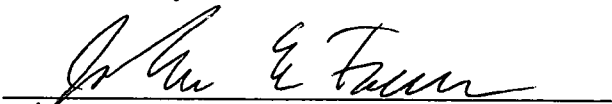
Date: 3/23/02

  
Sharon Elizabeth Wilson

Date: 3/25/02

  
Robert Curley

Date: 3/25/02

  
John E. Farr

Date: 3/25/02

  
Catherine E. Farr

# This Deed,

Made the sixteenth (16th) day of May in the year of our Lord one thousand nine hundred and fifty-three (1953).

Between JAMES E. GINTER, JR., in his own right, and as the husband of JEAN K. GINTER, and JEAN K. GINTER, in her own right, and as the wife of JAMES E. GINTER, JR., both of the City of DuBois, Clearfield County, Pennsylvania, hereinafter called the

Grantors  
and STANLEY G. GRAFF and ELEANOR G. GRAFF, husband and wife, as tenants by entireties, both of the City of DuBois, Clearfield County, Pennsylvania, hereinafter called the

Grantee s  
Witnesseth, that in consideration of Seventeen Thousand (\$17,000.00) Dollars

in hand paid, the receipt whereof is hereby acknowledged, the said grantors do hereby grant and convey to the said grantees, their heirs and assigns ALL that certain piece, parcel or tract of land situate, lying and being in the City of DuBois, County of Clearfield and State of Pennsylvania, and known and numbered as lot No. 109 as per Long's Addition to the City of DuBois, and being fifty (50) feet wide on East Washington Avenue by one hundred and fifty (150) feet deep to East Spruce Alley, and fifty (50) feet wide on East Spruce Alley, and bounded and described as follows, to wit:

On the South by East Washington Avenue; on the West by lot No. 110; on the North by East Spruce Alley; and on the East by lot No. 108. Having thereon erected a two-story brick dwelling house known as 133 East Washington Avenue, and a two-story frame dwelling house known as 133½ East Washington Avenue.

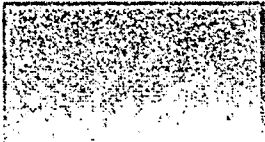
BEING the same premises which Margery Ginter Hoffmann and Frederick G. Hoffmann, her husband, and James E. Ginter, Jr., and Jean K. Ginter, his wife, by their deed dated August 26, 1952 and recorded in Clearfield County, Pa., in Deed Book 423, page 504, granted and conveyed to James E. Ginter, Jr., and Jean K. Ginter, husband and wife, the grantors herein.

And, the said grantors, do hereby covenant and agree to and with the said grantees, that they, the grantors, their heirs, executors and administrators, shall and will warrant ever generally and forever defend the herein above described premises, with the hereditaments and appurtenances unto the said grantees, their heirs and assigns, against the said grantors and against every other person lawfully claiming or who shall hereafter claim the same or any part thereof.



In witness whereof, said grantors have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered  
in the presence of  
James E. Ginter, Jr.  
Jean K. Ginter  
Stanley G. Graff  
Eleanor G. Graff

[Search Listings](#)[Listing With Us](#)[Area Information](#)[Meet Our Staff](#)[Why Choose MR](#)[Contact Us](#)[Search](#)[Home](#)

Property Search Results



SALE PENDING

[BACK](#)**Property Details:**

MLS Number: 04-7540  
Address: 133 East Washington Ave  
DuBois  
Bedrooms: 4  
Bathrooms: 2

**Description:**

2 STORY 4 BEDROOM BRICK HOME IN TOWN OFFERS LOTS OF ORIGINAL WOODWORK SPACIOUS DINING ROOM AND LIVING ROOM WITH FIREPLACE, GREAT STORAGE PLUS WALK-UP ATTIC TO POSSIBLY FINISH. OTHER FEATURES INCLUDE FENCED IN BACKYARD, 1 CAR GARAGE PAVED DRIVE AND LARGE FRONT PORCH. ALSO INCLUDED 2 BEDROOM DUPLEX PERFECT FOR THE BUYER LOOKING FOR A PROJECT AND SOME ADDITIONAL INCOME

**Information:**

For more information on this property please contact Roberta by [e-mail](#) or by calling (814) 375-4663. [Click Here](#) to view agent profile.

Website Design by:  
[M-III Publishing, Inc](#)

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Exhibit "B"



FILED

MAY 14 2002

William A. Shaw  
PROTHONOTARY

M 11/10/12 Fitzgerald pd \$80.00

acc L. Fitzgerald

GA

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ROBERT CURLEY, JOHN E. FARR,  
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Plaintiffs

vs.

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persons claiming any interest in the  
described property,  
Defendants

: No. 02 - 760 - C.D.  
:  
: Type of Case: EQUITY  
:  
: Type of Pleading: PETITION FOR  
: DISQUALIFICATION OF COUNSEL  
: AND ASSISTANT COUNSEL FOR  
: DEFENDANT, CITY OF DUBOIS  
:  
: Filed on Behalf of: PLAINTIFFS  
:  
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:  
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**FILED**

JUN 11 2002

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER,  
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Defendants

No. 02 - 760 - C.D.

**FILED**

JUN 18 2002

William A. Shaw  
Prothonotary

RULE TO SHOW CAUSE

NOW, this 17<sup>th</sup> day of June, 2002, upon consideration of the attached Petition for Disqualification of Counsel and Assistant Counsel for Defendant, CITY OF DUBOIS, a Rule is hereby issued upon Defendants, CITY OF DUBOIS and ELEANOR G. GRAFF, her successors and/or assigns and all other persons claiming any interest in the described property, to Show Cause why the Petition should not be granted. RULE RETURNABLE on the 8 day of July, 2002, for filing written response.

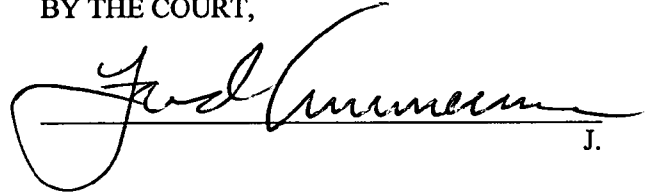
NOTICE

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PETITION FOR DISQUALIFICATION OF COUNSEL FOR DEFENDANT, CITY OF DUBOIS, YOU MUST DO SO BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR  
Clearfield County Courthouse  
Second & Market Streets  
Clearfield, PA 16830  
(814) 765-2641, Ext. 5051

BY THE COURT,



A handwritten signature in cursive script, appearing to read "Fred Munroe", is written over a horizontal line. The signature is fluid and extends to the right of the line.

J.

**FILED**

300

0125864  
JUN 18 2002

Fitzwater (Pro Se)  
146 E. Long Ave, Dubois

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
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PETITION FOR DISQUALIFICATION OF COUNSEL AND ASSISTANT COUNSEL FOR  
DEFENDANT, CITY OF DUBOIS

AND NOW, comes the Plaintiffs, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY M. WAY, DANIEL LEE, EVA LEE, ALFRED WILLIAM WILSON, SHARON ELIZABETH WILSON, ROBERT CURLEY, JOHN E. FARR and CATHERINE E. FARR who file the following Petition for Disqualification of Counsel and Assistant Counsel for Defendant, CITY OF DUBOIS, and in support thereof, the following is averred;

1. On March 11, 2002, Plaintiff, LISA A. FITZWATER, contacted and informed representatives of Defendant, CITY OF DUBOIS, that a non-conforming property, whose use had been abandoned, located at 133½ and 135½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania, owned by Defendant, ELEANOR G. GRAFF, was being sold in violation of the Zoning Ordinances of Defendant, CITY OF DUBOIS.

2. On April 1, 2002, Defendant, CITY OF DUBOIS, held a Town Meeting and allowed Plaintiffs to place the issue of the abandoned use of the non-conforming structure on the agenda.

3. At the aforesaid Town Meeting, Toni M. Cherry, counsel for Defendant, CITY OF DUBOIS, publicly averred that Defendant, CITY OF DUBOIS, did not consider the use of the non-conforming property abandoned and that a municipality has no duty to enforce its ordinances. A true and correct copy of a newspaper article from the Courier-Express Newspaper is attached hereto and made a part hereof as Exhibit "A".

4. In order to enforce Plaintiffs rights as aggrieved property owners whose properties will be substantially affected by the zoning violation of the property owned by Defendant, ELEANOR G. GRAFF, Plaintiff, JAY FAUST, personally served a copy of a Complaint in Equity on Defendant, CITY OF DUBOIS, at the aforesaid Town Meeting, pursuant to 53 P.S. §10617 and Ordinance No. 1470, §705.

5. Paula M. Cherry, Assistant Counsel for Defendant CITY OF DUBOIS, and partner in the Law Firm of Gleason, Cherry & Cherry with Toni M. Cherry, has participated personally and substantially in the representation of The Graff Family Trust on behalf of the Trustor and Defendant, ELEANOR G. GRAFF, as well as the Estate of Stanley G. Graff, Deceased, on behalf of Defendant, ELEANOR G. GRAFF.

6. The current representation of Defendant, CITY OF DUBOIS, by its counsel Toni M. Cherry, and its assistant counsel, Paula M. Cherry, on the abandoned use of the non-conforming structure owned by Defendant, ELEANOR G. GRAFF, located at 133½ and 135½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania, is prohibited by Rule 1.11 of the Rules of Professional Conduct.

7. On April 23, 2002, Toni M. Cherry, counsel for Defendant, CITY OF DUBOIS, caused to be published in the Courier-Express Newspaper, a Letter to the Editor, which is prohibited by the Rules of Professional Conduct, Rules 3.5 and 3.6. A true and correct copy of the Letter to the Editor is attached hereto and made a part hereof as Exhibit "B".

8. On May 13, 2002, Defendant, CITY OF DUBOIS, held a Council Meeting where Toni M. Cherry, counsel for Defendant, CITY OF DUBOIS, made the following statements:

- a) That she felt it was wrong to declare the use of a non-conforming property abandoned;
- b) That she was not going to declare the use of the non-conforming property located at 133½ and 135½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania abandoned;
- c) That the City Council for Defendant, CITY OF DUBOIS, would not be voting on whether to declare the use of the property located at 133½ and 135½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania abandoned; and
- d) That the City Council for Defendant, CITY OF DUBOIS, would not be taking any action regarding the property located at 133½ and 135½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania.

9. The statements set forth in paragraph 8 of this Petition for Disqualification of Counsel and Assistant Counsel for Defendant, CITY OF DUBOIS, are prohibited by the Rules of Professional Conduct, Rule 3.4(c).

10. On May 14, 2002, Plaintiffs filed the Complaint in Equity in order to enforce their rights as aggrieved property owners whose properties will be substantially affected by the zoning violation of the property owned by Defendant, ELEANOR G. GRAFF.

11. Toni M. Cherry, counsel for Defendant, CITY OF DUBOIS, owns a non-conforming lot pursuant to the Zoning Ordinances of Defendant, CITY OF DUBOIS, situate at 310 West Weber Avenue, DuBois, Clearfield County, Pennsylvania.

12. Eleanor L. Cherry, the mother of Toni M. Cherry and Paula M. Cherry, counsel and assistant counsel for Defendant, CITY OF DUBOIS, owns a non-conforming structure located on a non-conforming lot pursuant to the Zoning Ordinances of Defendant, CITY OF DUBOIS, situate at 501 West Washington Avenue, DuBois, Clearfield County, Pennsylvania, which has been vacant for in excess of one (1) year and the use could be considered abandoned in accordance with the zoning laws of Defendant, CITY OF DUBOIS.

13. The Estate of Joseph J. Cherry, deceased, and Grace Cherry, the uncle and aunt of Toni M. Cherry and Paula M. Cherry, counsel and assistant counsel for Defendant, CITY OF DUBOIS, own a non-conforming structure located on a non-conforming lot pursuant to the Zoning Ordinances of Defendant, CITY OF DUBOIS, situate at 11½ South State Street, DuBois, Clearfield County, Pennsylvania, which has been vacant for in excess of one (1) year and the use could be considered abandoned in accordance with the zoning laws of Defendant, CITY OF DUBOIS.

14. Grace Cherry and Josephine Cherry, the aunts of Toni M. Cherry and Paula M. Cherry, counsel and assistant counsel for Defendant, CITY OF DUBOIS, own a non-conforming structure located on a non-conforming lot pursuant to the Zoning Ordinances of Defendant, CITY OF DUBOIS, situate at 15 South State Street, DuBois, Clearfield County, Pennsylvania, which has been vacant for in excess of one (1) year and the use could be considered abandoned in accordance with the zoning laws of Defendant, CITY OF DUBOIS.

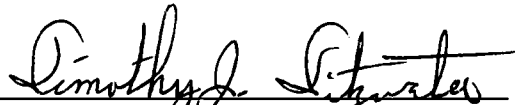
15. Defendant, CITY OF DUBOIS, through their counsel and assistant counsel, Toni M. Cherry and Paula M. Cherry, have failed to take any action on the abandoned use of the non-conforming structure located at 133½ and 135½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania owned by Defendant, ELEANOR G. GRAFF.

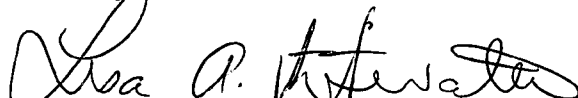
16. Defendant, CITY OF DUBOIS, through their counsel and assistant counsel, Toni M. Cherry and Paula M. Cherry, have failed to act as an impartial tribunal in the proceedings on the abandoned use of the non-conforming structure located at 133½ and 135½ East Washington Avenue, DuBois, Clearfield County, Pennsylvania owned by Defendant, CITY OF DUBOIS.


17. The above facts reasonably call into question the impartiality of Toni M. Cherry and Paula M. Cherry, counsel and assistant counsel for Defendant, CITY OF DUBOIS, and dictate that Toni M. Cherry and Paula M. Cherry, counsel and assistant counsel for Defendant, CITY OF DUBOIS, be disqualified from further action herein.

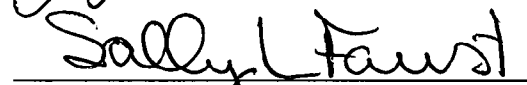
WHEREFORE, Plaintiffs, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY M. WAY, DANIEL LEE, EVA LEE, ALFRED WILLIAM WILSON, SHARON ELIZABETH WILSON, ROBERT CURLEY, JOHN E. FARR and CATHERINE E. FARR, respectfully requests that this Honorable Court issue an Order disqualifying Toni M. Cherry and Paula M. Cherry, counsel and assistant counsel for Defendant, CITY OF DUBOIS.


Respectfully submitted,

  
Timothy J. Fitzwater, Plaintiff

  
Lisa A. Fitzwater, Plaintiff

  
Jay Faust, Plaintiff

  
Sally Faust, Plaintiff

  
Lawrence M. Way, Plaintiff


  
Amy M. Way, Plaintiff

  
Alfred William Wilson, Plaintiff

  
Sharon Elizabeth Wilson, Plaintiff

  
Robert Curley

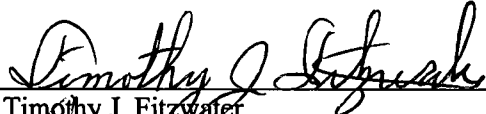
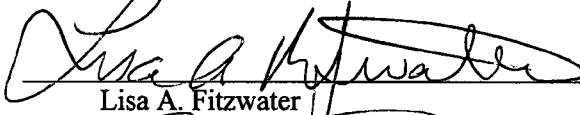
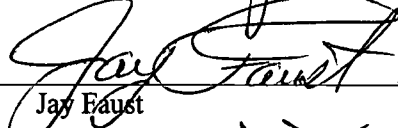
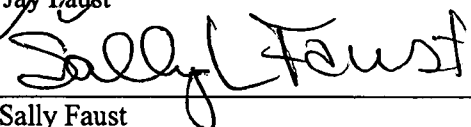
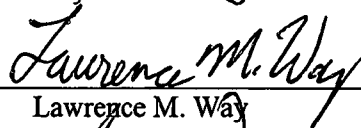
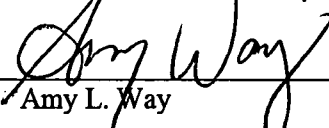
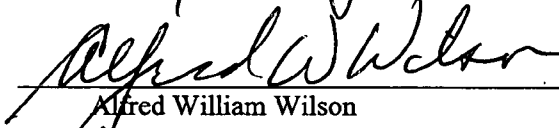
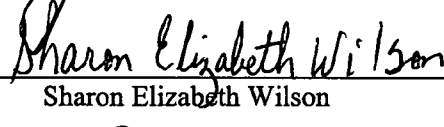
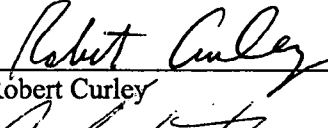
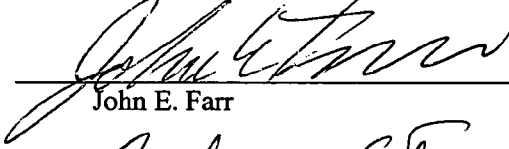
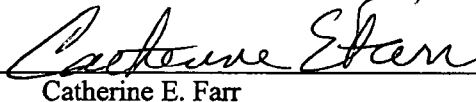
  
John E. Farr, Plaintiff

  
Catherine E. Farr, Plaintiff



COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF CLEARFIELD :

We, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY M. WAY, ALFRED WILLIAM WILSON, SHARON ELIZABETH WILSON, ROBERT CURLEY, JOHN E. FARR and CATHERINE E. FARR, verify that the statements made in this Complaint are true and correct. We understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date: <u>06/7/02</u>	<u></u> Timothy J. Fitzwater
Date: <u>6/7/02</u>	<u></u> Lisa A. Fitzwater
Date: <u>6/7/02</u>	<u></u> Jay Faust
Date: <u>6/7/02</u>	<u></u> Sally Faust
Date: <u>6/7/02</u>	<u></u> Lawrence M. Way
Date: <u>6/7/02</u>	<u></u> Amy L. Way
Date: <u>6/7/02</u>	<u></u> Alfred William Wilson
Date: <u>6/7/02</u>	<u></u> Sharon Elizabeth Wilson
Date: <u>6/7/02</u>	<u></u> Robert Curley
Date: <u>6/7/02</u>	<u></u> John E. Farr
Date: <u>6/7/02</u>	<u></u> Catherine E. Farr

# Resident asks city to enforce ordinance

By DENA BOSAK  
C-E Staff Writer

DuBOIS — A resident asked the DuBois City Council Monday to enforce its zoning ordinance regarding an abandoned lot.

Lisa Fitzwater, 146 E. Long Ave., DuBois, asked the council to enforce the ordinance on an abandoned property at 133 E. Washington Ave. owned by Eleanor G. Graff.

## DuBois

She said the property consists of a 50-by-150-foot lot with two houses — a single residence and a duplex.

"The property has not been rented for three to four years," she said. "And there was actually a water-line break there where 750,000 gallons of water ran for three months."

She said the city was aware of the problem and the line was fixed, "but nothing else was ever done."

"We are asking the city to send a certified letter to the owner saying the property has been declared abandoned and can't be sold as a duplex," she said. "That is all we want."

City Solicitor Toni Cherry said the city does not consider the property abandoned and will not be taking any action.

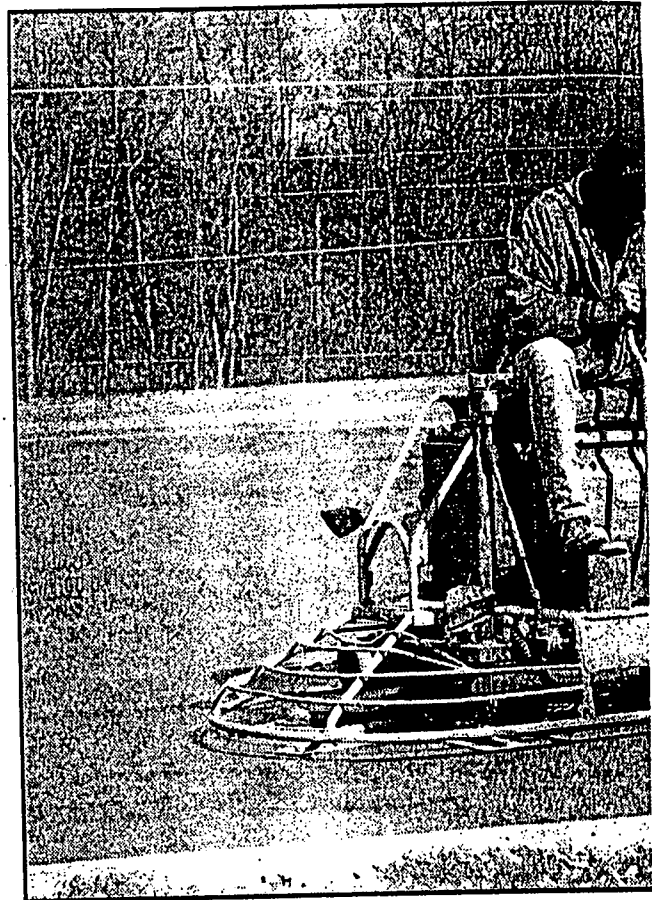
"A municipality has no duty to enforce its ordinances," Cherry said.

"It is a matter of discretion," she said citing several court cases.

Fitzwater then served the city with a complaint of equity, the first step in the legal process.

The city now has 30 days to review the complaint.

She said if the city does not take any action, she will bring suit in the Clearfield County Court of Common Pleas.



**SIT AND SPIN** — Kriss Baker of Big Run, working for (ing trowel) to apply a finish to a concrete floor on an addition. The device enabled the crew to pour and finish an entire concrete in one day. Norm Bish, owner of the shop, said the inventory. (Photo by Paul A. Wilson)

## Council to oppose a

By DAVE NEIL  
C-E Correspondent

FALLS CREEK — The proposed airport access road was the center of discussion when the Falls Creek Borough

## Falls Creek

Council met Monday.

The Pennsylvania Department of Transportation will be holding a meeting on the road at the DuBois Holiday Inn at 4 p.m. Tuesday. The council voted to instruct the mayor to voice the borough's opposition to the proposal.

## Lack of police

By DAVID NEIL  
C-E Correspondent

FALLS CREEK — Borough Council, with DuBois-based state police, expressed day about crime in the

A state police spokesman confirmed only three officers can man the whole shift, which sometimes leaves the borough with minimal police presence.

Councilman Dennis several residents complained that cars park at night in lighted areas near

Exhibit "A"



## CITY OF DuBOIS, PENNSYLVANIA

P.O. BOX 408

16 W. SCRIBNER AVE.

DuBOIS, PENNSYLVANIA 15801

Office of the City Solicitor

TELEPHONE (814) 371-2002

FAX (814) 371-1290

April 22, 2002

Editor  
The Courier-Express  
500 Jeffers Street  
P. O. Box 407  
DuBois, PA 15801

Dear Sir:

After reading the Complaint that Mr. and Mrs. Fitzwater and their neighbors intend to file against the City of DuBois and reviewing the contents of their letters to the Editor, I understand that they want the City of DuBois to force an owner of property to discontinue the use of a two-family dwelling located on his land and to make him tear the building down without being compensated for that structure.

The right to own and use property is considered a privilege so fundamental that it is guaranteed under the Constitution of this United States and of this Commonwealth. A municipal government can only interfere with an individual's use and control of his property through the adoption of appropriate zoning and land use ordinances and only if those laws have a rational relation to public safety, health, morals or general welfare. Moreover, even if a municipality drafts zoning and land use ordinances that prevent a particular use of a property, it cannot stop those prohibited uses if they were in existence at the time that the ordinances came into being.

In the case of which Mr. and Mrs. Fitzwater now complain, a duplex has been erected on a property for years prior to the City enacting any ordinances that would prohibit the construction of a duplex in the

Exhibit "B"

*"Gateway To Big Game Country"*

Editor  
Page Two  
April 22, 2002

particular zoning district where it is now located. Consequently, the law permits that duplex to continue to exist and to be used as a duplex.

Mr. and Mrs. Fitzwater knew, or certainly should have known, when they bought their home in that neighborhood that the duplex was there. The issues of tenants, street parking, and all of the other complaints that the Fitzwaters and their neighbors now bring to the City's attention existed when the zoning ordinances were drafted and certainly when the neighbors to this duplex chose to move to this neighborhood.

At no time did the current owner ever advise the City of DuBois of any intention to abandon the property as a duplex. The City continued to send separate water and sewer bills and those bills were paid. The property was advertised for sale as a duplex and no objection to that advertisement was raised at any time by either Mr. or Mrs. Fitzwater or any of their neighbors. Now that the duplex has been sold by its owner and a buyer has agreed to purchase the same based on the representation that the property he purchased contained a duplex, neighbors have come forward to demand that the City of DuBois not permit such a use.

The City of DuBois does not believe that the use of the property as a duplex has been abandoned. We will not take action to stop owners from using their land for purposes that are recognized under law to

Editor  
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April 22, 2002

be legitimate and to be uses that pre-dated our zoning ordinances. The right to use and sell this property is constitutionally protected and the City of DuBois will respect that because it existed before our ordinances were enacted.

There are duplexes located in every residential district in this community that pre-date our zoning ordinances. Sometimes those duplexes are fully rented and sometimes they are not, through no fault of the owners of the property except that they have been unable to find suitable tenants. To require that owners of rental properties lose the value of their investment if they allow those buildings to remain vacant for a year would force owners to accept tenants that they do not want or prohibit them from taking the time to make much needed repairs to their properties if the time frame will cause the duplexes to be without tenants for a year. The City sees no benefit to that.

There are many houses in this community that have been erected on what are now substandard lots, based on the language of our current zoning ordinances. Many of those homes are currently empty because their owners are in nursing homes or are arranging to make repairs on them or have not found willing tenants. If the City of DuBois follows the course of action demanded by Mr. and Mrs. Fitzwater and their neighbors, all of these structures should be declared abandoned if they remain empty for one year and the owners should be made to tear them down. The financial harm to the owners of these properties and/or their heirs and to the City of DuBois in lost tax dollars would be enormous and would

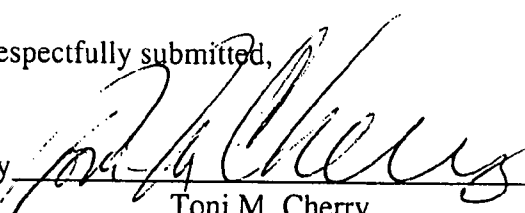
Editor  
Page Four  
April 22, 2002

serve no good to the community as a whole. That is why a municipality does not rush to declare a non-conforming use abandoned but, in stead, looks for evidence that the owner has intended to abandon the use.

In the case at hand, the City does not believe that its ordinances have been violated. The owner of the property has clearly evidenced his intent to keep the use of the home as a duplex. It has been advertised for sale as a duplex and it was bought as a duplex by the purchaser. The City of DuBois cannot keep Mr. and Mrs. Fitzwater and their neighbors from suing, but the City will defend its right to make its own decisions as to whether or not its ordinances have been violated.

Respectfully submitted,

By

  
Toni M. Cherry  
City Solicitor for the City of DuBois

TMC:mls

cc: Mr. and Mrs. Tim Fitzwater

## Traffic tragedy in the making

I am writing this letter in the hope I may help prevent a future tragedy. I live near the top of Spring Avenue, in DuBois, and have done so for the past 15 months. As I sit on my front porch and watch my children, along with numerous other children from the neighborhood, play outside, I find that I am a constant nervous wreck. My street is a "short cut" to Central Christian High School and DRMC West. Every single day I watch vehicles drive up and down this hill at speeds that only a seasoned Indy racecar driver should attempt! There are, on any given day, between 10 and 20 children within this one block radius, from the intersection of Wood and Hubert streets the closest stop sign is a full block away, at the corner of Spring and State streets. I have witnessed everyone from parents picking their children up from the school to employees of the hospital, driving at these unsafe speeds, and have finally become disgusted enough to attempt to do something to make these children safer.

I have also noticed an increase in traffic along South Main Street, which runs through Spring Avenue. I am sure this is due to the construction taking place along South Brady Street. There has been a sharp increase of traffic on my street in particular. If any officer from the City of DuBois Police Department would like to spend a few hours, especially between the hours of 2:30 - 3:30 p.m., parked in my driveway, they would be welcome to do so. I would be willing to bet they could give out enough speeding tickets to pay off the debt the city has accumulated over the past several years.

In closing, I would like to add that I am not the only parent in this area who has this concern. Several of us have taken turns yelling to vehicles to slow down, to no

avail. I realize that we are not the only street in town with this problem, and that children and drivers alike have to act responsibly, especially now that school is almost out for the summer, but from what I have witnessed, our street seems to have a bigger problem with this than others. Would any member of the city be willing to see about having a stop sign, or at the very least, a "Children at Play" sign erected on Spring Avenue, at the Wood Street intersection? I hope this can be done before an accident happens that will change the lives of so many.

Dawn M. Shaffer  
DuBois

## Building's use not abandoned

After reading the complaint that Mr. and Mrs. Fitzwater and their neighbors intend to file against the City of DuBois and reviewing the contents of their letters to the editor, I understand that they want the city to force a property owner to discontinue the use of a two-family dwelling and to make him tear the building.

The right to own and use property is considered a privilege so fundamental that it is guaranteed under the constitutions of the United States and this commonwealth. A municipal government can only interfere with an individual's use and control of his property through the adoption of appropriate zoning and land use ordinances and only if those laws have a rational relation to public safety, health, morals or general welfare. Moreover, even if a municipality drafts zoning and land use ordinances that prevent a particular use of a property, it cannot stop those prohibited uses if they were in existence at the time that the ordinances came into being.

In the case of which Mr. and Mrs. Fitzwater now complain, a duplex has been on the property for years prior to the city enacting any ordi-

nances that would prohibit the construction of a duplex in the zoning district where it is located. Consequently, the law permits that duplex to continue to exist and to be used as a duplex.

Mr. and Mrs. Fitzwater knew, or certainly should have known, when they bought their home in that neighborhood that the duplex was there. The issues of tenants, street parking and all of the other complaints that the Fitzwaters and their neighbors now bring to the city's attention existed when the zoning ordinances were drafted and certainly when the neighbors to this duplex chose to move there.

At no time did the current owner ever advise the city of DuBois of any intention to abandon the property as a duplex. The city continued to send separate water and sewer bills and those bills were paid. The property was advertised for sale as a duplex and no objection to that advertisement was raised at any time by either Mr. or Mrs. Fitzwater or any of their neighbors.

Now that the duplex has been sold to a buyer who agreed to purchase it based on the representation that the property contains a duplex, neighbors have come forward to demand that the city not permit such a use.

The City of DuBois does not believe that the use of the property as a duplex has been abandoned. We will not take action to stop owners from using their land for purposes that are recognized to be legitimate. The right to use and sell this property is constitutionally protected and the city will respect that because it existed before our ordinances were enacted.

There are duplexes located in every residential district in this community that pre-date our zoning ordinances. Sometimes those duplexes are fully rented and sometimes they are not, often because the owners have been unable to find suitable tenants. To require that

owners of rental properties lose the value of their investment if they allow those buildings to remain vacant for a year would force them to accept tenants that they do not want or prohibit them from taking the time to make much-needed repairs to their properties if the time frame will cause the duplexes to be without tenants for a year. The city sees no benefit to that.

There are many houses in this community that have been erected on what are now substandard lots, based on the language of our current zoning ordinances. Many of those homes are currently empty because their owners are in nursing homes or are arranging to make repairs on them or have not found willing tenants. If the City of DuBois follows the course of action demanded by Mr. and Mrs. Fitzwater and their neighbors, all of these structures should be declared abandoned if they remain empty for one year and the owners should be made to tear them down. The financial harm to the owners of these properties and/or their heirs and to the city of DuBois in lost tax dollars would be enormous and would serve no good to the community as a whole. That is why a municipality does not rush to declare a nonconforming use abandoned but, instead, looks for evidence that the owner has intended to abandon the use.

In the case at hand, the city does not believe that its ordinances have been violated. The owner of the property has clearly shown his intent to keep the use of the home as a duplex. It has been advertised for sale as a duplex and it was bought as a duplex by the purchaser.

The City of DuBois cannot keep Mr. and Mrs. Fitzwater and their neighbors from suing, but the city will defend its right to make its own decisions as to whether or not its ordinances have been violated.

Toni M. Cherry  
city solicitor

## Support claims of refugee camp massacre

that a large number of civilians died and are under the

raeli soldiers would have died if all that happened at Jenin

outskirts of Jerusalem.

In April, 1948, goons from

negligent in permitting the militiamen to enter the camps,

**FILED**

JUN 11 2002

M/105/13C  
William A. Shaw  
Prothonotary

*PH. L. Fitzerwater*  
*[Signature]*



**TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY L. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR,**

**VS.**

**FILED**

JUL 01 2002

W/ 8:30 / W  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY M. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR,  
Plaintiffs

vs.

No. 02 – 760 - C.D.

CITY OF DUBOIS, and  
ELEANOR G. GRAFF, her successors  
and/or assigns and all other  
persons claiming any interest in the  
described property,  
Defendants

RETURN OF SERVICE

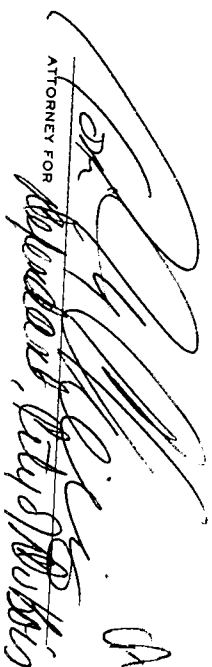
Now be it known that I, John Joseph Ward, verify that on the 11<sup>th</sup> day of June, 2002, at 2:30 p.m., I personally served an original court-certified copy of a Complaint in Equity, No. 02 – 760 – C.D., upon John “Herm” Suplizio, the Mayor of the City of DuBois, at the United Way Office located at 118 West Long Avenue, DuBois, Clearfield County, Pennsylvania.

I understand that <sup>ANY</sup> false statements herein are <sup>MADE</sup> ~~made~~ subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Dated: 6 - 21 - 02

  
John J. Ward

GLEASON, CHERRY & CHERRY, L.L.P.  
LAW OFFICES  
P.O. Box 505  
Du Bois, Pennsylvania 15801-0505  
ONE NORTH FRANKLIN STREET

  
ATTORNEY FOR  
Du Bois, Pennsylvania

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

TIMOTHY J. FITZWATER,	:	No. 02 - 760 C.D.
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: EQUITY
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	Type of Pleading: PRELIMINARY
SHARON ELIZABETH WILSON,	:	OBJECTIONS OF DEFENDANT, CITY
ROBERT CURLEY, JOHN E. FARR,	:	OF DUBOIS, TO PLAINTIFFS' COMPLAINT
and CATHERINE E. FARR,	:	
Plaintiffs	:	Filed on Behalf of: Defendant, CITY OF
	:	DUBOIS
vs.	:	
	:	Counsel of Record for this Party:
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	TONI M. CHERRY, ESQ.
and/or assigns and all other	:	Supreme Court No.: 30205
persons claiming any interest in the	:	
described property,	:	GLEASON, CHERRY AND
Defendants	:	CHERRY, L.L.P.
	:	Attorneys at Law
	:	P. O. Box 505
	:	One North Franklin Street
	:	DuBois, PA 15801
	:	
	:	(814) 371-5800

FILED

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M/10/15/02  
William A. Shaw  
Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs : No. 02 - 760 C.D.

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**NOTICE TO PLEAD**

To The Within Plaintiffs:

YOU ARE HEREBY NOTIFIED TO PLEAD  
TO THE WITHIN PRELIMINARY  
OBJECTIONS WITHIN TWENTY (20) DAYS  
FROM THE DATE OF SERVICE HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By 

Attorneys for Defendant, CITY OF DUBOIS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs : No. 02 - 760 C.D.

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**PRELIMINARY OBJECTIONS OF DEFENDANT,**  
**CITY OF DUBOIS, TO PLAINTIFFS' COMPLAINT**

Defendant, CITY OF DUBOIS, by and through its undersigned attorney, preliminarily  
objects to Plaintiffs' Complaint as follows:

**I. PRELIMINARY OBJECTION RAISING QUESTION OF LACK  
OF SUBJECT MATTER JURISDICTION UNDER Pa.R.C.P. 1028(a)(1)**

1. The Complaint of the Plaintiffs alleges that the other Defendant has committed  
violations of the Zoning Ordinances of the City of DuBois.
2. That the CITY OF DUBOIS is a Third Class City under the laws of the  
Commonwealth of Pennsylvania.

3. Section 909.1 of the Pennsylvania Municipalities Planning Code, Act of 1968, July 31, P.L. 805, re-enacted 1988, Dec. 21, P.L. 1329, No. 170, Section 2, *et seq.*, gives Zoning Hearing Boards exclusive jurisdiction over ordinance violation determinations.

4. That the Complaint seeks to have your Honorable Court enforce the provisions of the Zoning Ordinances of the City of DuBois.

5. Section 617.1 of the Pennsylvania Municipalities Planning Code, Act of 1968, July 31, P.L. 805, re-enacted 1988, Dec. 21, P.L. 1329, No. 170, Section 2, *et seq.*, gives District Justices initial jurisdiction over proceedings brought under Section 617.2 which recites the enforcement remedies involving matters of zoning.

6. Your Honorable Court has no jurisdiction over the subject matters of this action.

WHEREFORE, Defendant, CITY OF DUBOIS, requests that the Plaintiffs' Complaint be dismissed with costs assessed against Plaintiffs.

**II. PRELIMINARY OBJECTIONS OF DEFENDANT, CITY  
OF DUBOIS, RAISING LEGAL INSUFFICIENCY OF A PLEADING  
(DEMURRER) IN ACCORDANCE WITH Pa.R.C.P. 1028(a)(4)**

7. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 6 inclusive of these Preliminary Objections as if the same were set forth at length herein.

8. The Plaintiffs filed the Complaint in the above-captioned matter alleging that Defendant, ELEANOR G. GRAFF, is in violation of the various ordinances of the City of DuBois.

9. The Plaintiffs have filed their Complaint against the CITY OF DUBOIS requesting that the Court compel the CITY OF DUBOIS to enforce the provisions of its Ordinance No. 1470, Section 700, by appointing a zoning officer.

10. That Plaintiffs know that the CITY OF DUBOIS does have a Code Enforcement/Zoning Officer, namely William Kulbacki, appointed by the CITY OF DUBOIS, in accordance with the provisions of 53 P.S. Section 10614 and the terms of the City's ordinances.

11. That even if the City did not have an appointed individual, the Plaintiffs cannot request your Honorable Court to compel the CITY OF DUBOIS to make such appointment because the City cannot be compelled to enforce its ordinances.

12. That Plaintiffs have also brought this action requesting the Court to compel the CITY OF DUBOIS to enforce Ordinance No. 1470, Section 704, by bringing enforcement proceedings against Defendant, ELEANOR G. GRAFF.

13. A municipality has no duty to enforce its ordinances and cannot be compelled to do so by the Court.

14. Section 617.2 of the Municipalities Planning Code gives the power of enforcement of a zoning ordinance of a municipality only to that municipality.

15. Therefore, Defendant, CITY OF DUBOIS, preliminarily objects on the grounds that the Plaintiffs have no cause of action against the CITY OF DUBOIS to compel it to enforce its ordinances.



WHEREFORE, Defendant, CITY OF DUBOIS, respectfully requests your Honorable Court to grant its Preliminary Objection by way of Demurrer and to dismiss Plaintiffs' Complaint.

### **III. PRELIMINARY OBJECTION RAISING LACK OF CAPACITY TO SUE UNDER Pa.R.C.P. 1028(a)(5)**

16. Defendant incorporates herein by reference the averments contained in Paragraphs 1 through 15 inclusive of these Preliminary Objections as if the same were set forth at length herein.

17. That Plaintiffs bring this action to enforce the provisions of the Zoning Ordinances of the City of DuBois and to address violations of said ordinance they allege to have been committed by additional Defendant, ELEANOR G. GRAFF.

18. That in Paragraph 46 of their Complaint, Plaintiffs admit that they have no standing to bring their request for enforcement of alleged violations before the Zoning Hearing Board of the City of DuBois.

19. Section 617.2 of the Pennsylvania Municipalities Planning Code gives the right to enforce the provisions of any zoning ordinance of the City of DuBois only to the City of DuBois and no right to commence any action for enforcement of any zoning ordinances lies with any person or entity other than the municipality.

20. The Plaintiffs in this action lack the capacity to sue because they are individuals and are not the municipality whose zoning ordinances are the subject matter of this action.

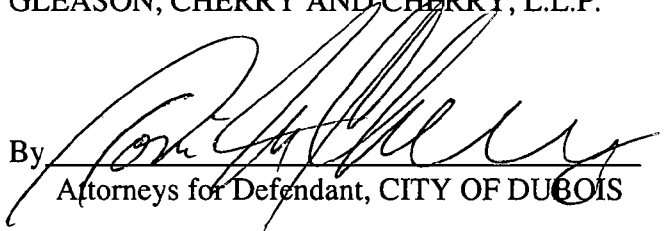
WHEREFORE, Defendant respectfully requests that your Honorable Court dismiss

Plaintiffs' Complaint.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

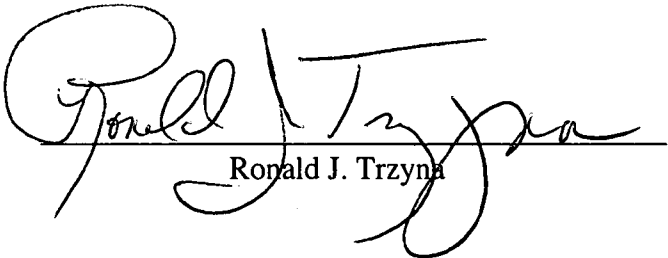
By

A handwritten signature in black ink, appearing to be "D. M. Cherry", is written over a horizontal line.

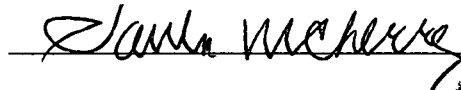
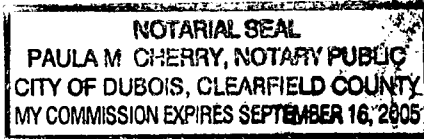
Attorneys for Defendant, CITY OF DUROIS

COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF CLEARFIELD :

Personally appeared before me, a Notary Public in and for the County and State aforesaid, RONALD J. TRZYNA, who, being duly sworn according to law, deposes and says that he is the Manager of the CITY OF DUBOIS and as such Manager is authorized to make this Affidavit on behalf of the Defendant, CITY OF DUBOIS, as Manager and that the facts set forth in the foregoing Preliminary Objections are true and correct to the best of his knowledge, information and belief.

  
Ronald J. Trzyna

Sworn to and subscribed before me this 2<sup>nd</sup> day of July, 2002.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs : No. 02 - 760 C.D.

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2<sup>ND</sup> day of July, 2002, a true and correct copy of Preliminary Objections of Defendant, City of DuBois, to Plaintiffs' Complaint was served upon the following persons by mailing the same to them by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

Peter F. Smith, Esq.  
Attorney at Law  
30 South Second Street  
Clearfield, PA 16830

Timothy J. Fitzwater  
Lisa A. Fitzwater  
146 East Long Avenue  
DuBois, PA 15801

Jay Faust  
Sally Faust  
14 South Church Street  
DuBois, PA 15801

Lawrence M. Way  
Amy M. Way  
160 East Long Avenue  
DuBois, PA 15801

Daniel Lee  
Eva Lee  
206 East Washington Avenue  
DuBois, PA 15801

Robert Curley  
144 East Long Avenue  
DuBois, PA 15801

Alfred William Wilson  
Sharon Elizabeth Wilson  
129 East Washington Avenue  
DuBois, PA 15801

John E. Farr  
Catherine E. Farr  
138 East Long Avenue  
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By 

Attorneys for Defendant, CITY OF DUBOIS

Dated: July 2, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY L. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR,  
Plaintiffs

vs.

CITY OF DUBOIS and  
ELEANOR G. GRAFF, her successors  
and/or assigns and all other persons  
claiming any interest in the described  
property,  
Defendants

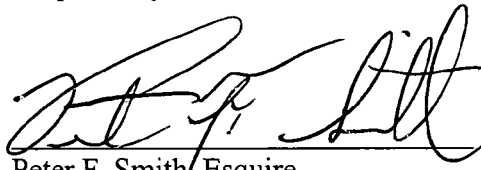
PRAECIPE

To: William A. Shaw, Clearfield County Prothonotary

Dear Sir:

Please enter my appearance as attorney for the second Defendant, ELEANOR G. GRAFF.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendant

Date: July 2, 2002

No. 02-760-CD

Type of Case: Equity

**FILED**

JUL 03 2002

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William A. Shaw  
Prothonotary

no c/c



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: Equity
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendant Eleanor G. Graff, certify that I sent a true and correct copy of a **PRAECIPE** to enter my appearance as attorney for Defendant by U.S. First Class Mail, Postage Prepaid on July 2, 2002 to the following:

Timothy J. Fitzwater  
Lisa A. Fitzwater  
146 East Long Ave.  
DuBois, PA 15801

Jay Faust  
Sally Faust  
14 South Church Street  
DuBois, PA 15801

Lawrence L. Way  
Amy M. Way  
160 East Long Ave.  
DuBois, PA 15801

Daniel Lee  
Eva Lee  
206 East Washington Ave.  
DuBois, PA 15801

Alfred William Wilson  
Sharon Elizabeth Wilson  
129 East Washington Ave.  
DuBois, PA 15801

Robert Curley  
144 East Long Ave.  
DuBois, PA 15801

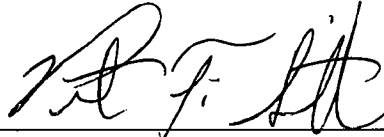
**FILED**

JUL 03 2002

0/11:00/w  
William A. Shaw  
Prothonotary  
w/c/c  
KED

John E. Farr  
Catherine E. Farr  
138 East Washington Ave.  
DuBois, PA 15801

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. F. Smith', written over a horizontal line.

Peter F. Smith, Esquire  
Attorney for Defendant

Date: July 2, 2002



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY L. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR,  
Plaintiffs

No. 02-760-CD

Type of Case: Equity

vs.

CITY OF DUBOIS and  
ELEANOR G. GRAFF, her successors  
and/or assigns and all other persons  
claiming any interest in the described  
property,  
Defendants

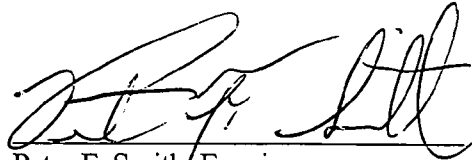
**PRAECIPE**

To: William A. Shaw, Clearfield County Prothonotary

Dear Sir:

Please enter my appearance as attorney for the second Defendant, ELEANOR G. GRAFF.

Respectfully submitted,



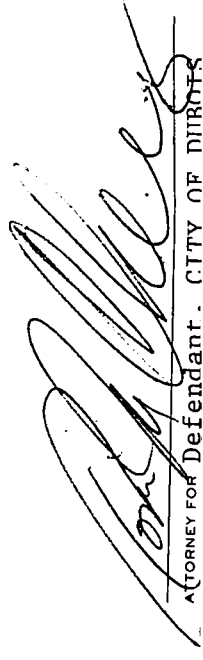
Peter F. Smith, Esquire  
Attorney for Defendant

Date: July 2, 2002

LAW OFFICES  
**GLEASON, CHERRY & CHERRY, L.L.P.**

P. O. Box 505  
DuBois, Pennsylvania 15801-0505

ONE NORTH FRANKLIN STREET



ATTORNEY FOR DEFENDANT, CITY OF DUBOIS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

TIMOTHY J. FITZWATER,	:	No. 02 - 760 C.D.
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: EQUITY
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	Type of Pleading: ANSWER TO
SHARON ELIZABETH WILSON,	:	PETITION FOR DISQUALIFICATION OF
ROBERT CURLEY, JOHN E. FARR,	:	COUNSEL AND ASSISTANT COUNSEL
and CATHERINE E. FARR,	:	FOR DEFENDANT, CITY OF DUBOIS
Plaintiffs	:	
	:	Filed on Behalf of: Defendant, CITY OF
	:	DUBOIS
vs.	:	
	:	Counsel of Record for this Party:
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	TONI M. CHERRY, ESQ.
and/or assigns and all other	:	Supreme Court No.: 30205
persons claiming any interest in the	:	
described property,	:	GLEASON, CHERRY AND
Defendants	:	CHERRY, L.L.P.
	:	Attorneys at Law
	:	P. O. Box 505
	:	One North Franklin Street
	:	DuBois, PA 15801
	:	
	:	(814) 371-5800

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William A. Shaw  
Prothonotary

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs : No. 02 - 760 C.D.

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**ANSWER TO PETITION FOR DISQUALIFICATION**  
**OF COUNSEL AND ASSISTANT COUNSEL FOR**  
**DEFENDANT, CITY OF DUBOIS**

AND NOW, comes the Defendant, CITY OF DUBOIS, by and through its undersigned counsel, and answers the Petition filed by Plaintiff in accordance with the Rule issued by the Court as follows:

1. DENIED. It is DENIED that Plaintiff, LISA A. FITZWATER, contacted and informed any representative of the Defendant, CITY OF DUBOIS, who was responsible for the determination that there existed a non-conforming property within the City of DuBois or that the use of such non-conforming property had been abandoned. It is DENIED that Plaintiff,

LISA A. FITZWATER, as a taxpayer and a non-owner of the property located at 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Pennsylvania, would have any authority or right under the Pennsylvania Municipalities Planning Code, 53 P.S. §10101, *et seq.*, to make any determination that said property was either a non-conforming property or that its use had been abandoned or that it was in violation of any zoning ordinances of the City of DuBois.

2. DENIED as stated. Plaintiff, LISA A. FITZWATER, asked for the right to address the Council of the CITY OF DUBOIS with complaints she had about a property at 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Pennsylvania. At no time did the CITY OF DUBOIS ever take the position that the complaints of Plaintiff, LISA A. FITZWATER, were legitimate nor did it ever make the determination that the property at 133-1/2 and 135-1/2 East Washington Avenue had been abandoned as that word is defined in the Pennsylvania Municipalities Planning Code and the Zoning Ordinance of the CITY OF DUBOIS.

3. DENIED as stated. In response to a request by the Council of the CITY OF DUBOIS for a legal opinion as to whether or not the use of the property had been abandoned, TONI M. CHERRY, counsel for Defendant, gave her legal opinion that it was not based on the law set forth in the Pennsylvania Municipalities Planning Code as well as the case law developed on the subject. In response to the assertions of the Plaintiff, LISA A. FITZWATER, made on behalf of herself and the other Plaintiffs that she represented, that the CITY OF DUBOIS had a duty to enforce the Ordinance to declare that the use of the property was abandoned, counsel for the CITY OF DUBOIS again advised the said LISA A. FITZWATER that the property was not abandoned under law and that the City had no duty to enforce its Ordinances. The newspaper article from The Courier-Express newspaper was written by a

reporter based on that reporter's discussions with Plaintiff, LISA A. FITZWATER, after the meeting. At no time did the CITY OF DUBOIS or its Solicitor ever advise The Courier-Express that the City had been served with any Complaint and, in fact, it had not, since there was no Complaint filed and the docket in the above-captioned matter evidences that fact.

4. DENIED. On the contrary, no Complaint in Equity was filed by Plaintiffs at the time that Plaintiff, LISA A. FITZWATER, appeared before the CITY OF DUBOIS Council on April 1, 2002. On the contrary, the Complaint in Equity filed by Plaintiffs to the above-captioned term and number was not filed until May 14, 2002, and was not served upon any authorized representative of the CITY OF DUBOIS until it was served upon the Mayor by handing a certified copy of the same to him personally on or about June 12, 2002. An Affidavit of Service evidencing the service of the certified copy of the Complaint upon the Mayor of the CITY OF DUBOIS avers that the Mayor was served on June 11, 2002, and that Affidavit is found in the pleadings filed to the above-captioned term and number. Consequently, there was no service of any Complaint in Equity upon the Defendant on April 1, 2002, and there could not have been service of the copy of the Complaint as the same was not filed until May 14, 2002.

5. ADMITTED in part and DENIED in part. It is ADMITTED that Paula M. Cherry is a partner in the law firm of Gleason, Cherry and Cherry with Toni M. Cherry. All other aspects of Paragraph 5 are DENIED. On the contrary, Paula M. Cherry is not Assistant Counsel for Defendant, CITY OF DUBOIS, in this case. She is the Assistant Solicitor for Defendant, CITY OF DUBOIS. Paula M. Cherry did not participate personally or substantially in the representation of the Graff Family Trust on behalf of the "Trustor" [sic]. However, the said

Paula M. Cherry did prepare the trust document that was the basis for the trust administered by the Trustee, S&T Bank, but that document was prepared several years ago. Paula M. Cherry represented the Estate of Stanley G. Graff, deceased, on behalf of Defendant, ELEANOR G. GRAFF.

6. DENIED. Rule 1.11 of the Rules of Professional Conduct declares that:

A lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, *unless the appropriate government agency consents after consultation.*

The law firm of Gleason, Cherry and Cherry, L.L.P. does not represent Defendant, ELEANOR G. GRAFF, in the above-captioned lawsuit. On the contrary, Mrs. Graff is represented by Peter F. Smith, Esq., who has entered his appearance on her behalf. The Rule prohibits subsequent representation of a private client in a matter in which the lawyer has previously participated as a public officer or employee and those are not the facts of this case. First of all, the Solicitor has not previously represented the government agency in anything that would be in conflict with the interests of ELEANOR G. GRAFF. Moreover, the CITY OF DUBOIS has been fully informed of the prior representation of the law firm of Defendant's counsel and has no objection to its Solicitor representing the CITY OF DUBOIS in the instant lawsuit and it is the CITY OF DUBOIS who must make such objection and not the Plaintiffs. Lastly, there is no conflict between the position taken by the CITY OF DUBOIS in this case and the position of Defendant, ELEANOR G. GRAFF, in that all Defendants agree that the use of the property located at 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Pennsylvania, has not been abandoned as that word is defined in zoning law.

7. ADMITTED in part and DENIED in part. While it is ADMITTED that on April 23, 2002, Toni M. Cherry wrote a letter to the Editor, it is DENIED that such letter is prohibited by the Rules of Professional Conduct, Rules 3.5 or 3.6. The letter which appears as Exhibit "B" in Plaintiff's Petition was written at the direction of the Council of the CITY OF DUBOIS in response to a letter to the Editor written by Plaintiff, LISA A. FITZWATER, on April 9, 2002, and in response to a letter to the Editor which appeared in the paper's edition on Wednesday, April 17, 2002, written by Plaintiff, TIMOTHY J. FITZWATER. True and correct copies of both letters are attached and made a part hereof as Exhibits "1" and "2" respectively.

That on April 23, 2002, there was no matter pending before any tribunal as that word is defined in the Rules of Professional Conduct. On the contrary, the Complaint filed to the above-captioned term and number was not filed by Plaintiffs until May 14, 2002, and not served upon a proper representative of the CITY OF DUBOIS until June 11, 2002. Moreover, Rule 3.5 prohibits an attempt to influence the tribunal through communication with the tribunal. There has been no *ex parte* communication with the Court of Common Pleas of Clearfield County, Pennsylvania, in an attempt to influence the Court in the instant matter. Rule 3.6 prohibits an extra judicial statement by a lawyer if the lawyer reasonably should know that such statement would materially prejudice the adjudicative proceeding. Since there was no proceeding pending before the Court of Common Pleas of Clearfield County, Pennsylvania, on April 23, 2002, there could be no publicity concerning such trial nor could there be any belief that the City would unfairly influence a tribunal by responding to the public accusations made by Plaintiffs.



Rule 3.6(c) permits a lawyer involved in litigation to present the general nature of the defense and information contained in a public record and to provide the public with information as to the scope of the investigation and the matter in progress. This is particularly appropriate where the real client of the lawyer are the taxpayers of the City of DuBois. It is therefore DENIED that any violation of either Rule 3.5 or 3.6 occurred and it is specifically DENIED that the Solicitor for the CITY OF DUBOIS does not have a duty to advise the taxpayer who are paying for the litigation of the position of the City in such matters for these are matters of public record to which the public has a right to have disclosed.

8. ADMITTED. By way of further answer, Plaintiffs were advised by members of City Council that the members of City Council had visited the site in question and found no violations and no basis for the demands being made by Plaintiffs that the property be declared abandoned.

9. DENIED. On the contrary, the Solicitor for the CITY OF DUBOIS did not appear before a tribunal as that word is defined in the Rules of Professional Conduct. Moreover, the Solicitor for the CITY OF DUBOIS is required, when asked, to give her legal opinion to the Council for the CITY OF DUBOIS and to state the City's legal position with regard to the demands being made by Plaintiffs. In response to Plaintiffs' demands that the CITY OF DUBOIS declare the property abandoned, the Council looked to the Solicitor to give to Plaintiffs once again, the City's legal position which was done. There is nothing in the Rules of Professional Conduct at Rule 3.4(c) that prohibits a Solicitor from rendering her legal opinion to the governmental body that is requesting the same.

10. ADMITTED in part and DENIED in part. It is ADMITTED that on May 14, 2002, Plaintiffs filed a Complaint in Equity to the above-captioned term and number. All other aspects of Paragraph 10 are DENIED. By way of further answer, it is DENIED that Plaintiffs have any rights or that they are aggrieved property owners or that their properties will be substantially affected by the property of Defendant, ELEANOR G. GRAFF. It is further DENIED that the property owned by Defendant, ELEANOR G. GRAFF, has committed any violation of the zoning laws of the CITY OF DUBOIS.

11. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the lot situate at 310 West Weber Avenue, DuBois, Pennsylvania, violates any of the ordinances of the CITY OF DUBOIS if that is the implication of Paragraph 11 of Plaintiffs' Petition.

12. DENIED. On the contrary, Eleanor L. Cherry does not own a non-conforming structure located on a non-conforming lot nor has said premises been vacant in excess of a period of one year. On the contrary, the premises at 501 West Washington Avenue, DuBois, Pennsylvania, is the home of Eleanor L. Cherry in which she has resided continuously since the same was purchased in 1952. Said premises is a one-family dwelling located in a residential district of the CITY OF DUBOIS and is not a non-conforming structure nor is it vacant nor is the home of Eleanor L. Cherry in any way in violation of the ordinances of the CITY OF DUBOIS.

13. DENIED. The Estate of Joseph J. Cherry owns no real estate within the CITY OF DUBOIS. Grace Cherry owns a single family residence situate at 11-1/2 South State Street and

such home is not a non-conforming structure nor is its use considered abandoned in accordance with the zoning laws of the Defendant, CITY OF DUBOIS.

14. DENIED as stated. Grace Cherry and Josephine Cherry own a duplex situate at 13-15 South Street in the CITY OF DUBOIS. The use of such premises by its owners as a duplex has never been abandoned nor is said structure in violation of the zoning laws of Defendant, CITY OF DUBOIS.

15. DENIED as stated. The structure located at 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Pennsylvania, is not abandoned nor is there any action required to be taken by Defendant, CITY OF DUBOIS, because the premises is not in violation of any ordinances of the CITY OF DUBOIS. Moreover, Plaintiffs cannot compel the CITY OF DUBOIS to take any action against Defendant, ELEANOR G GRAFF, under 53 P.S. §10617.2(c) and their attempts to do so by the filing of their Complaint to the above-captioned term and number is a violation of law and an attempt to harass Defendants as well as Defendants' Solicitor as evidenced by the allegations contained in the Petition for Disqualification of Counsel.

16. DENIED as stated. The allegations set forth in Paragraph 16 of Plaintiffs' Petition evidence their complete misreading of the Rules of Professional Conduct and their utter lack of understanding of the laws of zoning. Neither the CITY OF DUBOIS nor its counsel has any obligation to act as a tribunal in these proceedings as that is the province of the Court of Common Pleas of Clearfield County. The CITY OF DUBOIS has a right, through its counsel, to advocate the position of the CITY OF DUBOIS with regard to the interpretation of the ordinances of the CITY OF DUBOIS and the Solicitor has every right under the Rules of the Professional Conduct to set forth the position of the CITY OF DUBOIS and to defend that

position before a tribunal or before any individual who desires to bring suit against the CITY OF DUBOIS. The CITY OF DUBOIS did not bring enforcement proceedings against the structure located at 133-1/2 and 135-1/2 East Washington Avenue in the City of DuBois as demanded by Plaintiffs because said structure is not in violation of any of the ordinances of the CITY OF DUBOIS. Insofar as Plaintiffs' allegations imply that the CITY OF DUBOIS had some duty to act and which duty it did not fulfill, Defendant, CITY OF DUBOIS, wholly denies that it had any such duty or that Plaintiffs have any right to demand that it act in any way as they are not the owners of the property at 133-1/2 and 135-1/2 East Washington Avenue and have no standing to demand any action on the part of the CITY OF DUBOIS in accordance with 53 P.S. §10617.2.

17. DENIED. The position of the CITY OF DUBOIS and the position of its Solicitor are one and the same. The CITY OF DUBOIS is represented by its counsel and there is no conflict between the CITY OF DUBOIS and the action of its Solicitor. On the contrary, the actions of its Solicitor have been at all times consistent with the position of the CITY OF DUBOIS and the defense entered by the CITY OF DUBOIS in this case. At the request of and at the direction of the CITY OF DUBOIS, the Solicitor has filed Preliminary Objections on the basis that Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.

By way of further answer, it is averred that the actions of the Plaintiffs in this proceeding evidence their complete lack of understanding of the laws of zoning and further evidence that their suit is vexatious and frivolous. Defendant, CITY OF DUBOIS, is entitled to an award of counsel fees in accordance with statute as a result of the institution by Plaintiffs of a suit for relief that cannot be granted by your Honorable Court.

WHEREFORE, the undersigned respectfully requests your Honorable Court to issue an Order:

- (a) dismissing Plaintiffs' Petition;
- (b) dismissing Plaintiffs' Complaint with prejudice;
- (c) awarding counsel fees incurred by the CITY OF DUBOIS in defending this frivolous suit; and
- (d) directing the Plaintiffs to file no more vexatious pleadings calculated to harass, annoy and slander the CITY OF DUBOIS and/or its Solicitor.

Respectfully submitted,


GLEASON, CHERRY AND CHERRY, L.L.P.

By 

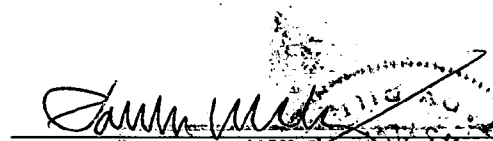
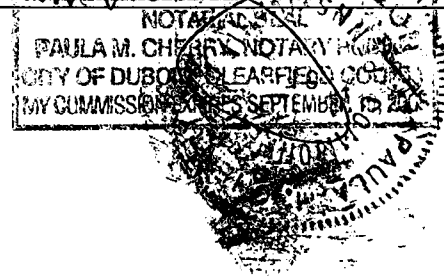
Attorneys for Defendant, CITY OF DUBOIS

COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF CLEARFIELD :

Personally appeared before me, a Notary Public in and for the County and State aforesaid, TONI M. CHERRY, who, being duly sworn according to law, deposes and says that she is the Solicitor of the CITY OF DUBOIS and as such Solicitor is authorized to make this Affidavit on behalf of the Defendant, CITY OF DUBOIS, as Solicitor and that the facts set forth in the foregoing Answer are true and correct to the best of her knowledge, information and belief.

  
Toni M. Cherry

Sworn to and subscribed before me this 8<sup>th</sup> day of July, 2002.

## 'Selective enforcement'

I am writing to let the residents of DuBois know that on April 1 a diverse group of 13 city residents, including single-family homeowners, rental property owners and a tenant, served a copy of a Complaint in Equity on the City of DuBois at its town meeting.

The reason for this letter is to explain why this was done and to state that we are not asking for any money from the City of DuBois in this suit. All we want is the City of DuBois to do its job and enforce its own laws.

I will briefly try to explain why this occurred. Several weeks ago, I learned that a property in my neighborhood was being sold and the proposed buyer wanted to use the property as rentals. This property is in an R-1 zoning district and consists of a single family home and a two-family duplex, both situated on one 50x150 lot. The two-family duplex is in deplorable condition and has not been rented by the owners in about four years.

More than two years ago a major water line break occurred at this property and the city lost 750,000 gallons of water in approximately three months. The line break was discovered by a neighbor, not the property owners who lived in the adjoining house.

The City of DuBois has a section in its zoning ordinance adopted in 1989 relating to nonconforming properties. These are properties that do not comply with the zoning provisions but were lawfully used prior to the zoning law enactment. This would be, for example, a duplex in an R-1 district. The zoning ordinance further sets forth, though, that if the non-conforming use ceases or is abandoned for one year or more, the property

must conform to the provisions of the ordinance. These are the same laws that the rest of the residents of DuBois must adhere to.

When I learned of this pending sale several weeks ago, I contacted the city and informed them that pursuant to their zoning ordinances, the use of the duplex had been abandoned. I was first told that the city would wait until the sale went through and then, if the buyer tried to open up the duplex, the city may then take action. I said that wasn't right. It was totally unfair to the buyer. After this, I never heard again from the mayor or any council member.

Next, the mayor contacted the zoning hearing board's solicitor and asked for his legal opinion. As I understand it, the solicitor told the mayor that it was his legal opinion that the nonconforming use of the property had been abandoned pursuant to the ordinance. This was obviously not what the mayor wanted to hear because he then turned it over to the city solicitor.

It was also during this time that I learned from several individuals at the city building that the city has no appointed zoning officer. This is in direct violation of city and state law.

Our group appeared at the town meeting on April 1 with our Complaint in Equity but really hoped we could have a meaningful discussion and work things out with our city officials. That never occurred, of course. The mayor and council never said a word. They let the city solicitor interrupt me while I was talking and stated that the city has no duty to enforce its own laws or ordinances.

What was truly amazing and not published in the Courier-Express was that during this same meeting, the city

manager made a big announcement that the previous week the city had served 75 certified letters on property owners with debris on their property. These were ordinance enforcement letters telling the property owners to clean up their property. This is called selective enforcement.

The Complaint in Equity cannot be filed with the courts for at least 30 days. This is supposedly so things can be worked out. I am not hopeful, however, since we have not heard from the mayor or any councilman. I think we are owed an explanation from our elected officials. Don't you?

Lisa A. Fitzwater  
DuBois

## Alt's plan won't work

I have read and listened to

many TV hunting programs which are filmed on restricted or fee-hunting reaches.

I have attended Alt's meetings, last year in Brookville and this year in Kane. He puts on a good program and is an excellent speaker, but I believe he doesn't know what he is talking about. I suspect he has camp followers to insure someone at every meeting agrees with him.

After his presentation, he has a question-and-answer period at which time he skirts direct questions that are negative to his ideas. He will start to answer, then go off on another tangent. When asked a second time, he turns and walks away. Believe me, this happens.

He stated at the Kane meeting that neither the timber industry or car insurance companies have lobbied on talked to him or the Pennsvl-

A-8

THE COURIER-EXPRESS Tuesday April 9, 2002

# Opinion

## The Courier-Express

fee-hunting club on limited-access grounds, but not in Pennsylvania as a whole. His plan to create a trophy situation would fit in with a scenario where you ride your four-wheeler to a previously located tree stand and wait for the big one. How often do you have time to tell the difference between a four-point and a six-point on the first day of deer season?

I think license sales will decline, leading to an increase in license fees, which will result in license sales declining again.

He has been watching too

goes for most logging areas.

It seems to me that his problem is his enormous ego. He has been hailed as a black bear expert after making a career of studying them. Now he is a deer expert after only one year. I admit I am not an expert and I have hunted for 55 years.

Maybe his ideas will work on a small or limited area, but don't commit the whole state to an untried fantasy. Or maybe we could just make it simple. Send him back to Colorado.

Donald A. McNeil  
Brockport

# st liberate themselves from Arafat

Exhibit "11"

These businesses "Yesser

vice threatening entire na-

bring about an end to the th-

...has been able to prove (or disprove) a negative concept, i.e., "There is no God," or "I didn't commit that criminal act." For precisely that reason, our country has adopted the "innocent until proven guilty" standard in criminal law. It is impossible to prove innocence with certitude, so we require proof of guilt beyond reasonable doubt before convicting someone.

On occasion, some of us lose that balance be-

tween what we know (or think we know), and what is true. Mathematical proofs are the bedrock of science, but in life, much of what we know is not come equipped with

Mankind is always paying the cost of heat for numbers in the next

There's nothing wrong with

But we need to maintain a balance between provable re-

...Americans try to understand why this confrontation cannot find some sensible resolution before it becomes a much wider conflict that threatens us all.

The pendulum has swung from indifference among rank-and-file Americans, in-

...or Israel apparently want to abandon the territories and provide a wholly independent state as proposed by a number of U.S. presidents. And the Palestinians' concessions that are out of the question. S. Mitchell told the American Society of Newspaper Editors that there are those in our country who fantasize about a Jewish state and other who fantasize about a complete removal of the Palestinians. Neither, he said, will become a reality. This will continue to be a problem.

...has been suggested.

...no solution is in sight. In the major planning, the majority of the population is in favor of a solution. At the risk of

A 10

THE COURIER-EXPRESS Wednesday, April 17, 2002

# Opinion

## The Courier-Express

### Here's what I think

#### Duplex caused an 'intolerable situation'

My wife had a letter to the editor published in the Courier Express on April 9 and we want to set the record straight. Between the time that the letter was given to the Courier and it was published, we did hear from Councilman Randy Schmidt and Mayor Herm Suplizio on several occasions and they did listen to our concerns.

The fact still remains, however, that the city has decided not to enforce its zoning ordinance. The council doesn't understand that the people of DuBois want the city to enforce its ordinances. If you are not going to enforce them, the ordinances should be repealed. You can't just decide that you're not going to enforce certain ordinances for whatever reason.

I have heard that there are individuals at the City Building who are angry with our group for what we are doing. We are sorry that we have made people angry, however, we are also angry. We are angry and tired. Tired of the daily fight we were subjected to when this duplex was rented and by the fight we are in now.

Most of our neighbors have invested a lot of time, money, work and love into restoring our homes in a historic part of DuBois. It has been quiet and peaceful these past four years. This is because the duplex I previously wrote

about has been vacant.

Before that, though, our daily lives were stressed to the point that we dreaded pulling into our own driveways to come home. Now *that* is sad.

In the past, we have had to call the police or the City Building almost daily because someone was parked in our driveway or because a car was blocking the alley. This is a dangerous situation. What if there was a fire at our home or a neighbor's home or if someone needed an ambulance?

This area of town is already very congested and there are minimal parking spaces available on the street. If this duplex reopens, we're sure the tenants will be right back parked in our driveways and in the alley.

We were forced in the past to live beside individuals who we suspected were dealing drugs, people who got into a lovers' quarrel that erupted into gunfire in the alley, people defecating in a neighbor's garage, people shooting bottle rockets over our homes, people dumping their ashtrays in our driveways, people throwing garbage everywhere, etc. The list could go on and on.

We have seen filthy and abused children removed from the duplex by Children, Youth Services and unsupervised toddlers playing behind our homes with lighters. One young child was allowed to climb into a running car parked in the alley. She knocked

the car into gear and it traveled most of the way down the alley before crashing into a neighbor's garage. Thankfully, this child was not injured.

The tenants in this duplex usually would stay only a few months and then pack up and leave at night, sticking the owner with huge utility bills and tons of trash. This is why the owners stopped renting the place four years ago. They were also tired of the entire situation.

I know that the owners checked with the city several years ago to see if they could subdivide the lot so that a group of neighbors could buy the duplex and tear it down. The city, however, would not agree to this subdivision because of zoning provisions. This is now the type of property, however, that the city is trying to save and have reopened.

I can't speak for my neighbors, but the fight has almost gone out of my family. This will be our last one. We love our home and would hate to leave it but if we are not successful in having the city enforce this ordinance we have decided we will try to sell and move out of DuBois.

We have a young child to think of now, and will not subject him to this intolerable situation. We want what everyone else wants. A normal, happy and peaceful home life. We hope we can still have it in our own home.

Tim Fitzwater  
DuBois

Exhibit "2"



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs : No. 02 - 760 C.D.

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of July, 2002, a true and correct copy of the Answer to Petition for Disqualification of Counsel and Assistant Counsel for Defendant, City of DuBois, was served upon the following persons by mailing the same to them by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

Peter F. Smith, Esq.  
Attorney at Law  
30 South Second Street  
Clearfield, PA 16830

Timothy J. Fitzwater  
Lisa A. Fitzwater  
146 East Long Avenue  
DuBois, PA 15801

Jay Faust  
Sally Faust  
14 South Church Street  
DuBois, PA 15801

Lawrence M. Way  
Amy M. Way  
160 East Long Avenue  
DuBois, PA 15801

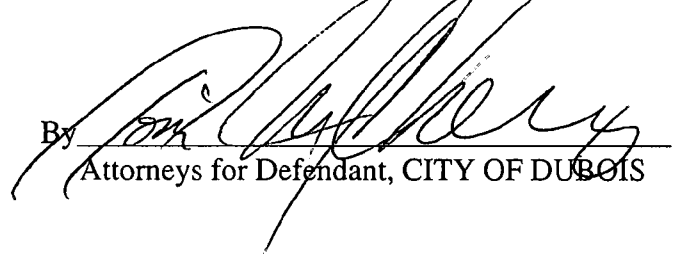
Daniel Lee  
Eva Lee  
206 East Washington Avenue  
DuBois, PA 15801

Robert Curley  
144 East Long Avenue  
DuBois, PA 15801

Alfred William Wilson  
Sharon Elizabeth Wilson  
129 East Washington Avenue  
DuBois, PA 15801

John E. Farr  
Catherine E. Farr  
138 East Long Avenue  
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By   
Attorneys for Defendant, CITY OF DUBOIS

Dated: July 8, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY L. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR,  
Plaintiffs

vs.

CITY OF DUBOIS and  
ELEANOR G. GRAFF, her successors  
and/or assigns and all other persons  
claiming any interest in the described  
property,  
Defendants

No. 02-760-CD

Type of Case: **Equity**

Type of Pleading:  
**Preliminary Objections**

Filed on Behalf of:  
**Eleanor G. Graff**

Counsel of Record for this Party:  
**Peter F. Smith**  
Supreme Court ID #34291  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

**FILED**

JUL 09 2002  
0/10.00 (w) *Shaw*  
William A. Shaw  
Prothonotary

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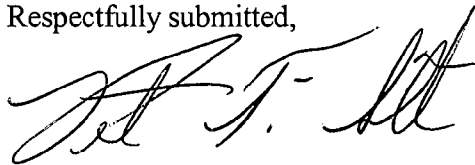
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: <b>Equity</b>
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

**PRELIMINARY OBJECTIONS**

COMES NOW, Eleanor G. Graff, by her attorney Peter F. Smith, who on behalf of his client joins in the Preliminary Objections filed in this matter by counsel for the City of DuBois on or about July 2, 2002.

Respectfully submitted,



Date: July 8, 2002

---

Peter F. Smith,  
Attorney for Eleanor G. Graff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
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EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendant Eleanor G. Graff, certify that I sent a true and correct copy of **PRELIMINARY OBJECTIONS** by U.S. First Class Mail, Postage Prepaid on July 8, 2002 to the following:

Timothy J. Fitzwater  
Lisa A. Fitzwater  
146 East Long Ave.  
DuBois, PA 15801

Jay Faust  
Sally Faust  
14 South Church Street  
DuBois, PA 15801

Lawrence L. Way  
Amy M. Way  
160 East Long Ave.  
DuBois, PA 15801

Daniel Lee  
Eva Lee  
206 East Washington Ave.  
DuBois, PA 15801

Alfred William Wilson  
Sharon Elizabeth Wilson  
129 East Washington Ave.  
DuBois, PA 15801

Robert Curley  
144 East Long Ave.  
DuBois, PA 15801

**FILED**

JUL 09 2002

0/10:00 AM  
William A. Shaw  
Prothonotary  
No. 1001-1011

John E. Farr  
Catherine E. Farr  
138 East Washington Ave.  
DuBois, PA 15801

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. F. Smith', written over a horizontal line.

Peter F. Smith,  
Attorney for Eleanor G. Graff

Date: July 8, 2002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: <b>Equity</b>
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	Type of Pleading:
SHARON ELIZABETH WILSON,	:	<b>Preliminary Objections</b>
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	Filed on Behalf of:
Plaintiffs	:	<b>Eleanor G. Graff</b>
	:	
vs.	:	Counsel of Record for this Party:
	:	<b>Peter F. Smith</b>
CITY OF DUBOIS and	:	Supreme Court ID #34291
ELEANOR G. GRAFF, her successors	:	P. O. Box 130
and/or assigns and all other persons	:	Clearfield, PA 16830
claiming any interest in the described	:	(814) 765-5595
property,	:	
Defendants	:	
	:	

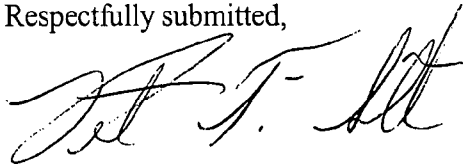
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SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

**PRELIMINARY OBJECTIONS**

COMES NOW, Eleanor G. Graff, by her attorney Peter F. Smith, who on behalf of his client joins in the Preliminary Objections filed in this matter by counsel for the City of DuBois on or about July 2, 2002.

Respectfully submitted,



Date: July 8, 2002

---

Peter F. Smith,  
Attorney for Eleanor G. Graff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY L. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR,

vs.

CITY OF DUBOIS and  
ELEANOR G. GRAFF, her successors  
and/or assigns and all other  
persons claiming any interest in the  
described property,

Defendants

: No. 02 - 760 - C.D.  
:  
: Type of Case: EQUITY  
:  
: Type of Pleading: ANSWERS TO  
: PRELIMINARY OBJECTIONS OF  
: DEFENDANT, CITY OF DUBOIS,  
: TO PLAINTIFFS' COMPLAINT  
:  
: Filed on Behalf of: PLAINTIFFS,  
: TIMOTHY J. FITZWATER, LISA A.  
: FITZWATER, JAY FAUST, SALLY  
: FAUST, LAWRENCE M. WAY, AMY  
: L. WAY, ALFRED WILLIAM WILSON,  
: SHARON ELIZABETH WILSON,  
: ROBERT CURLEY, JOHN E. FARR  
: and CATHERINE E. FARR

**FILED**

JUL 24 2002

m/ll/ll noce  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER,	:	
LISA A. FITZWATER, JAY FAUST.	:	
SALLY FAUST, LAWRENCE M. WAY,	:	
AMY M. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	
	:	
vs.	:	No. 02 - 760 - C.D.
	:	
CITY OF DUBOIS, and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other	:	
persons claiming any interest in the	:	
described property,	:	
Defendants	:	

ANSWERS TO PRELIMINARY OBJECTIONS OF DEFENDANT,

CITY OF DUBOIS, TO PLAINTIFF'S COMPLAINT

AND NOW, comes the Plaintiffs, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY M. WAY, ALFRED WILLIAM WILSON, SHARON ELIZABETH WILSON, ROBERT CURLEY, JOHN E. FARR and CATHERINE E. FARR, who file the following Answers to Preliminary Objections of Defendant, CITY OF DUBOIS, and in support thereof aver the following:

I. PRELIMINARY OBJECTIONS RAISING QUESTION OF LACK OF SUBJECT MATTER

JURISDICTION UNDER Pa.R.C.P. 1028(a)(1)

1. Admitted. By way of further answer, Plaintiffs read “other Defendant” to mean Defendant, ELEANOR G. GRAFF. Further, Plaintiffs’ Complaint also alleges that Defendant, CITY OF DUBOIS, has committed violations of the Zoning Ordinances of the City of DuBois and of 53 P.S. §10614.

2. Admitted.

3. Denied as stated. On the contrary, 53 P.S. 10909.1(3) gives zoning hearing boards exclusive jurisdiction to hear and render final adjudications in appeals from the determination of a zoning enforcement officer, however, Defendant, CITY OF DUBOIS, has failed to appoint a zoning enforcement officer in direct violation of 53 P.S. §10614. Further, 53 P.S. §10617 gives Plaintiffs the right to institute an equity action as aggrieved property owners whose property will be substantially affected.

4. Admitted. By way of further answer, Plaintiffs’ Complaint also seeks to have your Honorable Court enforce the provisions of the Pennsylvania Municipalities Planning Code.

5. Admitted. By way of further answer, 53 P.S. §10617.2 pertains to enforcement remedies which a municipality may pursue before a District Justice where the zoning hearing board has already had made an ordinance violation determination pursuant to 53 P.S. 10909.1(3), as a result of the issuance of an enforcement notice sent by a zoning enforcement officer. The Defendant, CITY OF DUBOIS, however, has failed to appoint a zoning enforcement officer in direct violation of 53 P.S. §10614.

6. Denied. Paragraph 6 is a conclusion of law to which no responsive pleading is required. By way of answer, however, 53 P.S. §10617 clearly gives this Honorable Court jurisdiction over the subject matters of this action.

WHEREFORE, Plaintiffs demand that judgment be entered in their favor and against Defendant, CITY OF DUBOIS, with prejudice.

II. PRELIMINARY OBJECTIONS OF DEFENDANT, CITY OF DUBOIS,  
RAISING LEGAL INSUFFICIENCY OF A PLEADING (DEMURRER) IN  
ACCORDANCE WITH Pa.R.C.P. 1028(a)(4)

7. No answer required.

8. Admitted.

9. Admitted. By way of further answer, Plaintiffs have also filed their Complaint against Defendant, CITY OF DUBOIS, requesting that the Court compel Defendant, CITY OF DUBOIS, to enforce the provisions of 53 P.S. §10614 and 53 P.S. §10616.1.

10. Admitted in part and denied in part. It is admitted that Plaintiffs know that Defendant, CITY OF DUBOIS, does have a Building Code Enforcement Officer, namely William Kulbacki, appointed by Defendant, CITY OF DUBOIS. It is denied, however, that William Kulbacki is the appointed Zoning Enforcement Officer for Defendant, CITY OF DUBOIS, in accordance with the provisions of 53 P.S. §10614 and the terms of the City's Ordinances. On the contrary, on March 11, 2002, Plaintiff, LISA A. FITZWATER, was informed by Ronald Johnson, the Engineering Technician for Defendant, CITY OF DUBOIS, that there was no Zoning Enforcement Officer for Defendant, CITY OF DUBOIS, and that the Engineering Technician and the City Manager were acting in that capacity.

By way of further answer, during the week of May 20, 2002, Plaintiff, TIMOTHY J. FITZWATER, spoke directly with William Kulbacki, Building Code Enforcement Officer, who advised that he only handles Building Code Enforcement, not Zoning Enforcement, and that he is not the Zoning Enforcement Officer.

11. Denied. Paragraph 11 is a conclusion of law to which no responsive pleading is required. By way of answer, however, Plaintiffs have requested the Court to compel Defendant, CITY OF DUBOIS, to appoint a Zoning Officer pursuant to 53 P.S. §10614, not solely by Ordinance No. 1470, Section 700. As such, Defendant, CITY OF DUBOIS, is under the jurisdiction of this Honorable Court.

12. Admitted. By way of further answer, Plaintiffs have also brought this action requesting the Court to compel Defendant, CITY OF DUBOIS, to enforce the provisions of 53 P.S. §10614 and §10616.1.

13. Denied. Paragraph 13 is a conclusion of law to which no responsive pleading is required. By way of answer, under 53 P.S. §10617, any aggrieved property owner or tenant, including Plaintiffs, who show that their property or person will be substantially affected by an alleged violation of any ordinance, may institute *any* appropriate action or proceeding to prevent, in or about such premises, any act, conduct, business or use constituting a violation.

14. Denied as stated. On the contrary, 53 P.S. §10617.2 only gives a municipality the right to commence an action for enforcement proceedings before a District Justice where the zoning hearing board has already made an ordinance violation determination pursuant to 53 P.S. §10909.1(3), based upon an enforcement notice sent by a zoning enforcement officer.

Defendant, CITY OF DUBOIS, however, has failed to appoint a zoning enforcement officer in direct violation of 53 P.S. §10614. Further, under 53 P.S. §10617, any aggrieved property owner or tenant, including Plaintiffs, who show that their property or person will be substantially affected by an alleged violation of any ordinance, may institute *any* appropriate action or proceeding to prevent, in or about such premises, any act, conduct, business or use constituting a violation.

15. Denied. Paragraph 15 is a conclusion of law to which no responsive pleading is required. By way of answer, however, under 53 P.S. §10617, any aggrieved property owner or tenant, including Plaintiffs, who show that their property or person will be substantially affected by an alleged violation of any ordinance, may institute *any* appropriate action or proceeding to prevent, in or about such premises, any act, conduct, business or use constituting a violation. As such, Plaintiffs indeed have a cause of action against Defendant, CITY OF DUBOIS, to compel it to enforce its ordinances and the Pennsylvania Municipalities Planning Code.

WHEREFORE, Plaintiffs demand that judgment be entered in their favor and against Defendant, CITY OF DUBOIS, with prejudice.

### III. PRELIMINARY OBJECTIONS RAISING LACK OF CAPACITY TO SUE

#### UNDER Pa.R.C.P. 1028(a)(5)

16. No answer required.

17. Admitted. By way of further answer, Plaintiffs also bring this action to enforce the provisions of 53 P.S. §10614 and §10616.1.

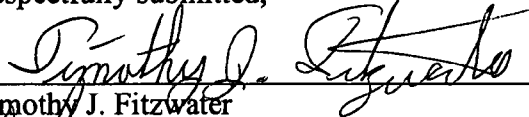
18. Admitted.

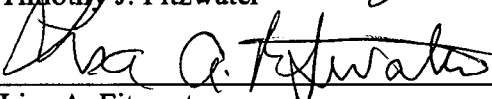
19. Denied as stated. On the contrary, 53 P.S. §10617.2 only gives a municipality the right to commence an action for enforcement proceedings before a District Justice where the zoning hearing board has already had made an ordinance violation determination based upon an enforcement notice sent by a zoning enforcement officer. Defendant, CITY OF DUBOIS, however, has failed to appoint a zoning enforcement officer in direct violation of 53 P.S. §10614. Further, under 53 P.S. §10617, any aggrieved property owner or tenant, including Plaintiffs, who show that their property or person will be substantially affected by an alleged violation of any ordinance, may institute *any* appropriate action or proceeding to prevent, in or about such premises, any act, conduct, business or use constituting a violation.

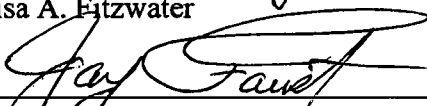
20. Denied. On the contrary, under 53 P.S. §10617, any aggrieved property owner or tenant, including Plaintiffs, who show that their property or person will be substantially affected by an alleged violation of any ordinance, may institute *any* appropriate action or proceeding to prevent, in or about such premises, any act, conduct, business or use constituting a violation. As such, Plaintiffs indeed have the capacity to proceed with this equity action.

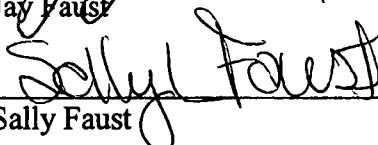
WHEREFORE, Plaintiffs demand that judgment be entered in their favor and against Defendant, CITY OF DUBOIS, with prejudice.

Respectfully submitted,

  
\_\_\_\_\_  
Timothy J. Fitzwater

  
\_\_\_\_\_  
Lisa A. Fitzwater

  
\_\_\_\_\_  
Jay Faust

  
\_\_\_\_\_  
Sally Faust





IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY L. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR,  
Plaintiffs

vs.

CITY OF DUBOIS and  
ELEANOR G. GRAFF, her successors  
and/or assigns and all other  
persons claiming any interest in the  
described property,  
Defendants

: No. 02 - 760 - C.D.  
:  
: Type of Case: EQUITY  
:  
: Type of Pleading: AFFIDAVIT OF  
: SERVICE  
:  
: Filed on Behalf of: PLAINTIFFS,  
: TIMOTHY J. FITZWATER, LISA A.  
: FITZWATER, JAY FAUST, SALLY  
: FAUST, LAWRENCE M. WAY, AMY  
: L. WAY, ALFRED WILLIAM WILSON,  
: SHARON ELIZABETH WILSON,  
: ROBERT CURLEY, JOHN E. FARR  
: and CATHERINE E. FARR  
:  
:  
:

**FILED**

JUL 24 2002

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST.  
SALLY FAUST, LAWRENCE M. WAY,  
AMY M. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR,  
Plaintiffs

vs.

CITY OF DUBOIS, and  
ELEANOR G. GRAFF, her successors  
and/or assigns and all other  
persons claiming any interest in the  
described property,  
Defendants

No. 02 - 760 - C.D.

**AFFIDAVIT OF SERVICE**

I, LISA A. FITZWATER, Plaintiff, being duly sworn according to law, depose and say that on the 20<sup>th</sup> day of June, 2002, I personally mailed a court-certified copy of the Complaint in Equity to the Defendant, ELEANOR G. GRAFF, by mailing said Complaint in Equity by certified mail restricted delivery to her attorneys-in-fact, namely, William S. Graff, 10115 East Mountain View Road, Unit 1024, Scottsdale, AZ 85258 and to Linda L. Bolam, 70 Wildwood Place, Lafayette, IN 47905. The United States Postal Form 3811 evidencing said service are attached hereto and made a part hereof.

---

Lisa A. Fitzwater

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Received by (Please Print Clearly) <b>Wm S GRAFF</b> B. Date of Delivery <b>6-25</b></p> <p>C. Signature <i>x William S. Graff</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to:</p> <p><b>Eleanor G. GRAFF</b>  <b>c/o William S. GRAFF</b>  <b>10115 EAST Mountain View Rd</b>  <b>Unit 1024</b>  <b>Scottsdale, AZ 85258</b></p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Copy from service label)</p> <p><b>700011670110002156430124111111111111</b></p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
PS Form 3811, July 1999		Domestic Return Receipt 102595-00-M-0952	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Received by (Please Print Clearly) <b>Linda L. Bolam</b> B. Date of Delivery <b>JUN 28 2002</b></p> <p>C. Signature <i>PBA for Eleanor G. Graff</i> <i>x Linda L. Bolam</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to:</p> <p><b>Eleanor GRAFF</b>  <b>c/o Linda L. Bolam</b>  <b>70 Wildwood Place</b>  <b>Lafayette, IN 47905</b></p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>2. Article Number (Copy from service label)</p> <p><b>70001167011000215643110131111111</b></p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
PS Form 3811, July 1999		Domestic Return Receipt 102595-00-M-0952	



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY :  
L. WAY, DANIEL LEE, EVA LEE, :  
ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR :  
and CATHERINRE E. FARR :

vs.

No. 02-760-CD

CITY OF DUBOIS and ELEANOR :  
G. GRAFF, her successors and/or :  
assigns, and all other persons claiming :  
any interest in the described property :

**FILED**

OCT 20 2002

William A. Shaw  
Prothonotary

**ORDER**

AND NOW, this 29 day of October, 2002, it is the ORDER of the  
Court that argument on Plaintiffs' Petition for Disqualification of Counsel and Assistant  
Counsel for Defendant, City of DuBois in the above matter has been scheduled for  
**Tuesday, December 24, 2002 at 9:00 A.M.** in Courtroom No. 2, Clearfield County  
Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN

**FILED**  
013:52/Bdt  
OCT 29 2002  
orders to add  
parties -  
see attached list  
Q  
K21  
William A. Shaw  
Prothonotary

NameOne	NameTwo	Address1	Address 2	City	State	ZipCode
Timothy J. Fitzwater	Lisa A. Fitzwater	146 East Long Ave.		DuBois	PA	15801
Jay Foust	Sally Foust	14 South Church Street		DuBois	PA	15801
Lawrence M. Way	Amy M. Way	160 East Long Ave.		DuBois	PA	15801
Daniel Lee	Eva Lee	206 E. Washington Ave.		DuBois	PA	15801
Alfred William Wilson	Sharon Elizabeth Wilson	129 E. Washington Ave.		DuBois	PA	15801
Robert Curley		144 East Long Ave.		DuBois	PA	15801
John E. Farr	Catherine E. Farr	138 East Long Ave.		DuBois	PA	15801
Toni M. Cherry, Esq.	Gleason, Cherry & Cherry	PO Box 505		DuBois	PA	15801
Peter F. Smith, Esq.	Attorney at Law	PO Box 130		Clearfield	PA	16830

CR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY :  
L. WAY, DANIEL LEE, EVA LEE, :  
ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR :  
and CATHERINRE E. FARR :

vs.

No. 02-760-CD

CITY OF DUBOIS and ELEANOR :  
G. GRAFF, her successors and/or :  
assigns, and all other persons claiming :  
any interest in the described property :

**FILED**

OCT 29 2002

William A. Shaw  
Prothonotary

**ORDER**

AND NOW, this 29<sup>th</sup> day of October, 2002, it is the ORDER of the

Court that argument on Defendant's Preliminary Objections in the above matter has been  
scheduled for **Tuesday, December 24, 2002 at 9:00 A.M.** in Courtroom No. 2,  
Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
Judge



**FILED**

orders to

all parties -

see attached list

013510611  
OCT 29 2002

William A. Shaw  
Prothonotary



NameOne	NameTwo	Address1	Address 2	City	State	ZipCode
Timothy J. Fitzwater	Lisa A. Fitzwater	146 East Long Ave.		DuBois	PA	15801
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John E. Farr	Catherine E. Farr	138 East Long Ave.		DuBois	PA	15801
Toni M. Cherry, Esq.	Gleason, Cherry & Cherry	PO Box 505		DuBois	PA	15801
Peter F. Smith, Esq.	Attorney at Law	PO Box 130		Clearfield	PA	16830

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY :  
L. WAY, DANIEL LEE, EVA LEE, :  
ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR ;  
and CATHERINRE E. FARR :

vs. :

No. 02-760-CD

CITY OF DUBOIS and ELEANOR :  
G. GRAFF, her successors and/or :  
assigns, and all other persons claiming :  
any interest in the described property :

**FILED**

OCT 29 2002

William A. Shaw  
Prothonotary

**ORDER**

AND NOW, this 29 day of October, 2002, it is the ORDER of the

Court that argument on Defendant's Preliminary Objections in the above matter has been  
scheduled for **Tuesday, December 24, 2002 at 9:00 A.M.** in Courtroom No. 2,  
Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
Judge

William A. Shaw  
Prothonotary

OCT 29 2002  
8/3/55  
61

ORDER TO ALL PARTIES  
SEE ATTACHED LIST  
**FILED**

NameOne	NameTwo	Address1	Address 2	City	State	ZipCode
Timothy J. Fitzwater	Lisa A. Fitzwater	146 East Long Ave.		DuBois	PA	15801
Jay Foust	Sally Foust	14 South Church Street		DuBois	PA	15801
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John E. Farr	Catherine E. Farr	138 East Long Ave.		DuBois	PA	15801
Toni M. Cherry, Esq.	Gleason, Cherry & Cherry	PO Box 505		DuBois	PA	15801
Peter F. Smith, Esq.	Attorney at Law	PO Box 130		Clearfield	PA	16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

TIMOTHY FITZWATER, et al :

VS. : NO. 02-760-CD

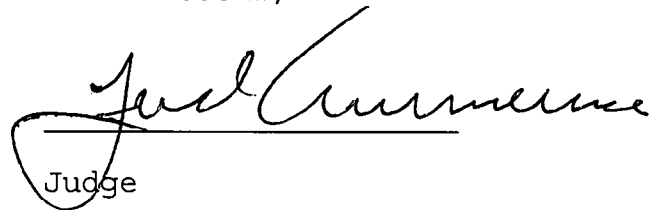
CITY OF DUBOIS and :

ELEANOR G. GRAFF :

O R D E R

NOW, this 24th day of December, 2002, following argument on the Preliminary Objections filed on behalf of Defendant and Petition for Disqualification of Counsel and Assistant Counsel filed on behalf of the Plaintiffs; with the Court noting its previous receipt of briefs on the issues from the Plaintiffs, it is the ORDER of this Court that counsel for the Defendants have no more than thirty (30) days from this date to submit appropriate briefs to the Court.

BY THE COURT,

  
Judge

**FILED**

JAN 03 2003

William A. Shaw  
Prothonotary

FILED

019:3348H  
JAN 03 2003

1cc Atty T. Cherry  
1cc Atty P. Smith

1cc Fitzwaters- 146 E. Long Ave, DuBois  
1cc Fausts- 14 S. Church St., DuBois  
1cc Wags- 1602 E. Long Ave, DuBois  
1cc Lees- 206 E. Washington Ave, DuBois  
1cc Wilsons- 129 E. Washington Ave., DuBois  
1cc Curley- 144 E. Long Ave, DuBois  
1cc Farris- 138 E. Long Ave, DuBois

William A. Shaw  
Prothonotary

GA  
HDS

Lap over margin

**PETER F. SMITH**  
ATTORNEY  
30 SOUTH SECOND STREET  
P.O. BOX 130  
CLEARFIELD, PA. 16830

COMMERCIAL PRINTING CO., CLEARFIELD, PA.

**FILED**

**JAN 24 2003**

William A Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: Equity
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

**FILED**  
JAN 24 2003  
0/2:15 PM  
William A. Shaw  
Prothonotary/Clerk of Courts  
No. 02-760-CD

**CERTIFICATE OF SERVICE**

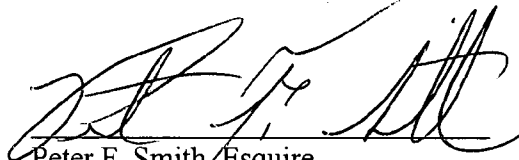
I, Peter F. Smith, attorney for Defendant Eleanor G. Graff, certify that I sent a true and correct copy of a **BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS** by U.S. First Class Mail, Postage Prepaid on January 24, 2003 to the following:

Timothy J. Fitzwater Lisa A. Fitzwater 146 East Long Ave. DuBois, PA 15801	Jay Faust Sally Faust 14 South Church Street DuBois, PA 15801	Lawrence L. Way Amy M. Way 160 East Long Ave. DuBois, PA 15801
Daniel Lee Eva Lee 206 East Washington Ave. DuBois, PA 15801	Alfred William Wilson Sharon Elizabeth Wilson 129 East Washington Ave. DuBois, PA 15801	Robert Curley 144 East Long Ave. DuBois, PA 15801
Toni M. Cherry, Esquire Gleason, Cherry and Cherry, L.L.P. P. O. Box 505 DuBois, PA 15801		

John E. Farr  
Catherine E. Farr  
138 East Washington Ave.  
DuBois, PA 15801

Respectfully submitted,

Date: January 24, 2003

A handwritten signature in black ink, appearing to read 'Peter F. Smith', written over a horizontal line.

Peter F. Smith, Esquire  
Attorney for Defendant, Eleanor G. Graff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY L. :  
WAY, DANIEL LEE, EVA LEE, ALFRED :  
WILLIAM WILSON, SHARON ELIZABETH :  
WILSON, ROBERT CURLEY, JOHN E. :  
FARR and CATHERINE E. FARR :

VS. :


NO. 02-760-CD

CITY OF DUBOIS and :  
ELEANOR G. GRAFF :

O R D E R

NOW, this 10th day of February, 2003, it is the  
ORDER of this Court that the Plaintiff's Petition for  
Disqualification of Counsel be and is hereby denied.

BY THE COURT,

  
Judge

FILED

FEB 11 2003

William A. Shaw  
Prothonotary

ICC PISS- See attached list

01/10/28 ~~201~~ 1cc Atty T. Cherry  
12/11/23 1cc Atty P. Smith

Wm. A. Shaw  
Prothonotary

*[Signature]*

02-760-CD Fitzwater vs. DuBois etal

Timothy J. Fitzwater  
Lisa A. Fitzwater  
146 E. Long Ave.  
DuBois, PA 15801

Jay Faust  
Sally Faust  
14 South Church St.  
DuBois, PA 15801

Lawrence L. Way  
Amy M. Way  
160 E. Long Ave.  
DuBois, PA 15801

Daniel Lee  
Eva Lee  
206 E. Washington Ave.  
DuBois, PA 15801

Alfred W. Wilson  
Sharon E. Wilson  
129 E. Washington Ave.  
DuBois, PA 15801

Robert Curley  
144 E. Long Ave.  
DuBois, PA 15801

John E. Farr  
Catherine E. Farr  
138 E. Long Ave.  
DuBois, PA 15801

Toni M. Cherry  
Gleason, Cherry & Cherry  
PO Box 505  
1 North Franklin St.  
DuBois, PA 15801

Peter F. Smith, Esq.  
PO Box 130  
Clearfield, PA 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, \*  
LISA A. FITZWATER, JAY FAUST, \*  
SALLY FAUST, LAWRENCE M. WAY, \*  
AMY L. WAY, DANIEL LEE, \*  
EVA LEE, ALFRED WILLIAM WILSON, \*  
SHARON ELIZABETH WILSON, \*  
ROBERT CURLEY, JOHN E. FARR, \*  
and CATHERINE E. FARR, \*  
Plaintiffs \*

vs. \*

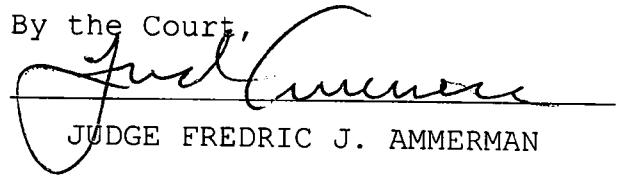
No. 2002-760-<sup>CD</sup>~~EQUITY~~

CITY OF DUBOIS and \*  
ELEANOR G. GRAFF, \*  
her successors and/or assigns \*  
and all other persons \*  
claiming any interest in the \*  
described property, \*  
Defendants \*

ORDER

NOW, this 14<sup>th</sup> day of February, 2003, it is the ORDER  
of this Court that the Preliminary Objections of the Defendants,  
City of DuBois and Eleanor G. Graff, to the Plaintiffs'  
Complaint be and are hereby DISMISSED.

By the Court,

  
JUDGE FREDRIC J. AMMERMAN

FILED

FEB 14 2003

CLARENCE A. SHAW  
CLERK OF COURT

**FILED**

0173284  
FEB 14 2003

ICC Piggs-Fitzwaters, Faustus, Wags,  
Leos, Wilsons, Curley, Fairs  
ICC Atty T. Cherry  
ICC Atty P. Smith

William A. Shaw  
Prothonotary

See attached sheet for addresses

02-760-CD Fitzwater vs. DuBois etal

Timothy J. Fitzwater  
Lisa A. Fitzwater  
146 E. Long Ave.  
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PO Box 505  
1 North Franklin St.  
DuBois, PA 15801

Peter F. Smith, Esq.  
PO Box 130  
Clearfield, PA 16830



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: <b>Equity</b>
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	Type of Pleading:
SHARON ELIZABETH WILSON,	:	<b>Answer, New Matter and Counterclaim</b>
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	Filed on Behalf of:
Plaintiffs	:	<b>Eleanor G. Graff</b>
	:	
vs.	:	Counsel of Record for this Party:
	:	<b>Peter F. Smith</b>
CITY OF DUBOIS and	:	Supreme Court ID #34291
ELEANOR G. GRAFF, her successors	:	P. O. Box 130
and/or assigns and all other persons	:	Clearfield, PA 16830
claiming any interest in the described	:	(814) 765-5595
property,	:	
Defendants	:	Counsel of Record for the City of DuBois:
	:	<b>Toni M. Cherry</b>
	:	Gleason, Cherry and Cherry, L.L.P.
	:	P. O. Box 505
	:	DuBois, PA 15801
	:	(814) 371-5800

**FILED**

MAR 13 2003

**William A. Shaw**  
**Prothonotary**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

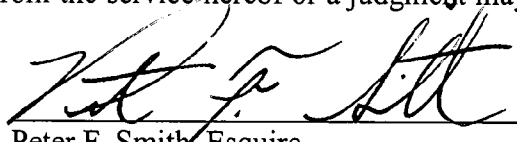
TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: <b>Equity</b>
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

**NOTICE TO DEFEND**

To: Timothy J. Fitzwater and Lisa A. Fitzwater  
Jay Faust and Sally Faust  
Lawrence M. Way and Amy L. Way  
Daniel Lee and Eva Lee  
Alfred William and Sharon Elizabeth Wilson  
Robert Curley  
John E. Farr and Catherine E. Farr

You are hereby notified to file a written response to the enclosed Answer, New Matter and Counterclaim within twenty (20) days from the service hereof or a judgment may be entered against you.

Date: 3/12/03

  
Peter F. Smith, Esquire  
Attorney for Defendant, Eleanor G. Graff  
P. O. Box 130  
30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: <b>Equity</b>
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

***ANSWER, NEW MATTER AND COUNTERCLAIM***

COMES NOW, Eleanor G. Graff, by her attorney, Peter F. Smith, who answers the  
complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted.

9. Admitted.
10. Admitted.
11. Denied. Mr. Curley has since moved to 155 Schonwalder Road, Clearfield PA 16830.
12. Admitted.
13. Admitted.
14. Admitted.
15. Denied. This is the former address of Eleanor G. Graff. Eleanor G. Graff currently resides in a residential care facility near LaFayette, Indiana, and further averred that she suffers from Alzheimer. She is completely incapacitated, and her daughter Linda L. Bolam, who resides at 70 Wildwood Place, Lafayette, IN 47905, is her Attorney-in-Fact.
16. Admitted.
17. Admitted.
18. Admitted.
19. Admitted.
20. Admitted.
21. Denied for reasons stated in 11 above.
22. Admitted
23. Admitted.
24. Admitted.
25. Denied. Mrs. Graff's property is not subject to that zoning designation because of the subject property's prior use for multi-family residences.
26. Denied for the reasons set forth in paragraph 25.

27. Denied. Defendant Eleanor G. Graff does not understand what Plaintiffs mean by “located directly”. Defendant demands strict proof of the relevance and materiality of this averment at trial.

28. Denied that the two-family detached dwelling has been vacant for a period in excess of four years and further denied because notwithstanding any periods of vacancy, Defendant Eleanor Graff has not abandoned her right to use the premises for multi-family dwellings.

29. Denied for the reasons set forth in paragraph 28.

30. Denied and admitted in part: The water line broke in 2000, but further averred that Defendant Eleanor Graff is a senior citizen who has had difficulty overseeing these properties. Her physical infirmity cannot and should not be misconstrued as evidence of abandonment.

31. Denied for the reasons set forth in paragraph 30.

32. Denied for the reasons set forth in paragraph 30.

33. Denied. Defendant Eleanor Graff has no direct knowledge of this averment.

34. Denied. Mrs. Graff has made such repairs as she and her Attorney-in-Fact deem necessary. The water line was the only pressing repair that needed to be made.

35. Denied. Utility services is still provided to the premises.

36. Denied for the reasons set forth in paragraphs 25, 28 and 35.

37. Denied for the reasons set forth in paragraphs 25, 28 and 35.

38. Denied as a conclusion of law and denied for the reasons set forth in paragraphs 25, 28 and 35 above.

39. Denied as a conclusion of law and for the reasons set forth in paragraphs 25, 28 and 35 above.

40. Admitted.
41. Admitted.
42. Admitted.
43. Neither admitted nor denied because it is beyond the personal knowledge of Defendant Eleanor G. Graff.
44. Denied. The City of DuBois does have an individual responsible for enforcing its zoning ordinances.
45. Denied. The City of DuBois has never notified Eleanor Graff that the properties at issue in any way violate the City's zoning ordinances.
46. Denied as a conclusion of law.
47. Denied as a conclusion of law for the reasons set forth in paragraphs 25, 28 and 35 above.
48. Denied as a conclusion of law for the reasons set forth in paragraphs 25, 28 and 35 above.
49. Denied. Defendant Eleanor Graff was using her property for multi-family dwellings at the time the Plaintiffs moved into the neighborhood. They are estopped from raising any objection at this point. Additionally, Defendant avers that the continued use of her property for multi-family dwellings will not cause overcrowding, blight, danger or congestion.
50. Denied for the reasons set forth in paragraph 49.
51. Neither admitted nor denied as a statement of law to which no response is required.
52. (sic 52.) Denied as a conclusion of law to which no response is required.

WHEREFORE, Defendant Eleanor G. Graff requests this Honorable Court to enter an Order dismissing the complaint with prejudice.

### ***NEW MATTER***

53. Paragraphs 1 through 52 of the foregoing complaint are incorporated herein by reference as those set forth in full.

54. Plaintiffs' claim is barred by the doctrine of laches. Mrs. Graff's use of the property for multi-family dwellings was established at the time Plaintiffs moved into this neighborhood which was many years ago. The DuBois City Ordinance was adopted in 1989. Plaintiffs allege that the one structure has been empty for four years. They should not be permitted to object at this late date and disrupt Defendant's sale of this property.

55. Plaintiffs are estopped from raising objection to Mrs. Graff's use of her property for multi-family dwellings. This use was established prior to the time any of the Plaintiffs moved into this neighborhood. If they had no objection then and purchased, they cannot equitably raise an objection now.

WHEREFORE, Defendant Eleanor G. Graff prays this Honorable Court to enter an Order dismissing the complaint with prejudice.

### ***COUNTERCLAIM***

56. Paragraphs 1 through 55 of the foregoing complaint and new matter are incorporated herein by reference as those set forth in full.

57. As admitted in paragraphs 41 and 42 of the complaint, the Plaintiffs knew that Defendant Eleanor Graff had entered a legally binding contract to sell the premises and that she had also engaged the services of Medred Realty as broker, yet the Plaintiffs took no steps to

resolve the issues raised in their complaint until after Mrs. Graff's Attorney-in-Fact has entered these legally binding contracts.

58. As admitted in paragraph 43 of the complaint, the Plaintiffs contacted the City of DuBois and alleged a zoning violation with the intent and sole objective of disrupting Defendant's sale of this real estate.

59. A true and correct copy of Defendant Eleanor Graff's sales contract for the subject properties with Dennis P. Kennelly dated February 6, 2002 is attached hereto and incorporated herein by reference as Defendant Eleanor G. Graff's Exhibit 1.

60. The buyer, Dennis P. Kennelly, declined to consummate his purchase of this property because of this litigation brought by Plaintiffs.

61. The sale of this real estate was to close on or before April 15, 2002.

62. This suit is without legal merit, privilege or justification and was filed as a form of legal blackmail.

63. Defendant Eleanor Graff has suffered a substantial financial loss as a result of the Plaintiffs' intentional interference with her real estate sales contract of the subject properties.

64. Currently Mrs. Graff expends \$10,304.38 a year or \$858.70 per month to maintain this real estate.

65. Defendant Eleanor Graff has been compelled to retain counsel to defend in this action. She has engaged Peter F. Smith at the rate of \$195.00 per hour.

66. The institution of this action by the Plaintiffs is arbitrary, capricious, vexatious and mean-spirited.

67. Therefore, Eleanor G. Graff is entitled to collect counsel fees and court costs from the Plaintiffs pursuant to 42 Pa. C.S.A. 2503.



68. Eleanor Graff's damages as a result of Plaintiffs' intentional interference with her contractual rights are:


- |  |             |
|--|-------------|
| a. Proceeds from the sale of this real estate to Kennelly          | \$58,000.00 |
| b. Ongoing costs of maintaining the property<br>@ 858.70 per month | \$ _____    |
| c. Court costs   | \$ _____    |
| c. Attorney's fees to Peter F. Smith                               | \$ _____    |

PRELIMINARY TOTAL	\$ _____
-------------------	----------

WHEREFORE, Eleanor G. Graff, prays this Honorable Court to enter an Order to recover her monetary damages in the amount of \$58,000.00 together with ongoing costs of maintaining the real estate, counsel fees, interest from the final date for closing of April 15, 2002 at the statutory rate of 6% and costs as specified above.

Respectfully submitted,

Date: 3-12-03

  
Peter F. Smith, Attorney for Eleanor G. Graff

AFFIDAVIT

STATE OF Pennsylvania :  
 : SS  
COUNTY OF Clearfield :

LINDA L. BOLAM, Attorney-in-Fact for ELEANOR G. GRAFF, being duly sworn according to law, deposes and says that she is duly authorized to make this Affidavit as Attorney-in-Fact for Eleanor G. Graff, and further, that the facts set forth in the foregoing Answer, New Matter and Counterclaim are true and correct to the best of her knowledge, information and belief.

Linda L. Bolam  
Linda L. Bolam  
Attorney-in-Fact for Eleanor G. Graff

SWORN TO AND SUBSCRIBED

before me this 8 day of  
MARCH, 2003.

Mark D. Miller  
Notary Public

**LISTING CONTRACT**  
**EXCLUSIVE RIGHT TO SELL REAL PROPERTY**

XLS

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of REALTORS® (PAR).

BROKER (Company) Medred Realty Associates  
LICENSEE(S) Robert J. Buehler  
SELLER Linda Bolam POA Grappestate

**1. PROPERTY**

Address 135, 133 1/2, 135 1/2 E. Washington Avenue LISTED PRICE \$ 65,000  
Municipality (city) borough, township DuBois  
County CLIF School District DuBois  
Zoning and Present Use R-1  
Identification Number (For example, tax identification number; parcel number; deed book, page, recording date) \_\_\_\_\_

**2. STARTING & ENDING DATES OF LISTING CONTRACT (also called "Term")**

- A. No Association of REALTORS® has set or recommended the term of this contract. By law, the length or term of a listing contract may not exceed one year. Broker and Seller have discussed and agreed upon the length or term of this contract.  
B. **Starting Date:** This Contract starts when signed by Broker and Seller, unless otherwise stated here: \_\_\_\_\_  
C. **Ending Date:** This Contract ends on July 15 2002

**3. PURPOSE OF THIS CONTRACT** Seller is hiring Broker to market Property and to find a buyer. Seller will refer all offers and inquiries to Broker. Seller allows Broker to use print and/or electronic advertising. Broker is acting as Seller Agent, as described in the Consumer Notice.

**4. BROKER'S FEE** No Association of REALTORS® has set or recommended the Broker's Fee. Broker and Seller have negotiated the fee that Seller will pay Broker. The Broker's Fee is 7% of/from the sale price and paid by Seller.

**5. COOPERATION WITH OTHER BROKERS** Licensee has explained Broker's company policies about cooperating with other brokers. Broker and Seller agree that Broker will pay from Broker's Fee:

- A. **A fee to another broker who represents the Seller (SUBAGENT).**  
☐ No ☒ Yes If Yes, amount: 2.8 of/from the sale price.  
B. **A fee to another broker who represents a buyer (BUYER'S AGENT). A Buyer's Agent, even if compensated by Broker or Seller, will represent the interests of the buyer.**  
☐ No ☒ Yes If Yes, amount: 2.8 of/from the sale price.  
C. **A fee to another broker who does not represent either the Seller or a buyer (TRANSACTION LICENSEE).**  
☐ No ☐ Yes If Yes, amount: \_\_\_\_\_ of/from the sale price.

**6. PAYMENT OF BROKER'S FEE**

- A. Seller must pay Broker's Fee if Property, or any ownership interest in it, is sold or exchanged during the length or term of this Contract by Broker, Broker's agents, Seller, or by any other person or broker, at the listed price or any price acceptable to Seller.  
B. Seller will pay Broker's Fee if negotiations that are pending at the Ending Date of this Contract result in a sale.  
C. Seller will pay Broker's Fee after the Ending Date of this Contract IF:  
(1) A sale occurs within 90 days of the Ending Date, AND  
(2) The buyer was shown or negotiated to buy the Property during the term of this contract.  
Seller will not owe Broker's Fee if the Property is listed under an "exclusive right to sell contract" with another broker at the time of the sale.

**7. BROKER'S FEE IF SALE DOES NOT OCCUR**

- A. Seller will pay Broker's Fee if a ready, willing, and able buyer is found by Broker or by anyone, including Seller. A willing buyer is one who will pay the listed price or more for the Property, or one who has submitted an offer accepted by Seller.  
B. If the Property or any part of it is taken by any government for public use (Eminent Domain), Seller will pay Broker \_\_\_\_\_ of/from any money paid by the government.  
C. If a buyer signs an agreement of sale then refuses to buy the Property, or if a buyer is unable to buy it because of failing to do all the things required of the buyer in the agreement of sale, Seller will pay Broker:  
(1) \$670 of/from buyer's deposit monies, OR  
(2) the Broker's Fee in Paragraph 4, whichever is less.

**8. DUAL AGENCY** Seller agrees that Broker may also represent the buyer(s) of the Property. Broker is a DUAL AGENT when representing both Seller and the buyer in the sale of a property.

**Designated Agency:**

- ☐ Not Applicable.  
☐ Applicable. Broker, as the Dual Agent, may designate licensees to represent the separate interests of Seller and the buyer. Licensee (identified above) is the Designated Agent, who will act exclusively as the Seller Agent. If Property is introduced to the buyer by a licensee in the Company who is not representing the buyer, then that licensee is authorized to work on behalf of Seller. If Licensee is also the Buyer Agent, then Licensee is a DUAL AGENT.

**9. BROKER'S SERVICE TO BUYER** Broker may provide services to a buyer for which Broker may accept a fee. Such services may include, but are not limited to, deed/ document preparation; ordering certifications required for closing; financial services; title transfer and preparation services; ordering insurance, construction, repair, or inspection services. Broker will disclose to Seller if any fees are to be paid by Buyer.

**10. OTHER PROPERTIES** Seller agrees that Broker may list other properties for sale and that Broker may show other properties to prospective buyers.

**11. CONFLICT OF INTEREST** A conflict of interest is when Broker or Licensee has a financial or personal interest where Broker or Licensee cannot put Seller's interests before any other. If the Broker, or any of Broker's salespeople, has a conflict of interest, Broker will notify Seller in a timely manner.

BEN PARK HAS 14 DAYS FROM EXECUTION OF THIS AGREEMENT TO MAKE AN ACCEPTABLE WRITTEN PURCHASE AGREEMENT WITH MEDRED REALTY ASSOCIATES, AND IN THIS EVENT THE COMMISSION WILL BE \$2,000.00

Seller Initials LB Jan. 21, 2002

Page 1 of 3

Broker/Licensee Initials LB



Pennsylvania Association of  
REALTORS®  
The Voice for Real Estate® in Pennsylvania

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11/99

EXHIBIT 1

12: SETTLEMENT & POSSESSION

- A. Preferred Settlement Date: \_\_\_\_\_
- B. Seller will give possession of the Property to Buyer at settlement or on \_\_\_\_\_
- C. (1) If the Property, or any part of it, is rented, Seller will give any leases to Broker before signing this Contract.  
(2) If any leases are oral, Seller will provide a written summary of the terms, including amount of rent, ending date, and Tenant's responsibilities.  
(3) Seller will not enter into or renew any lease during the term of this Contract except as follows: \_\_\_\_\_

13. TITLE

- A. At settlement, Seller will give full rights of ownership (fee simple) to a buyer except as follows:  
(1) Mineral Rights Agreements \_\_\_\_\_  
(2) Other \_\_\_\_\_
- B. Seller has:
- |   |  |                      |
|---|--|----------------------|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Mortgage with _____  |                      |
|   | Address _____ Phone _____  |                      |
|   | Acct. # _____ Amount of balance \$ _____   |                      |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Equity loan with _____   |                      |
|   | Address _____ Phone _____  |                      |
|   | Acct. # _____ Amount of balance \$ _____   |                      |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Seller authorizes Broker to receive mortgage payoff and/or equity loan payoff information from the lender. |                      |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Past Due Taxes   | Amount owed \$ _____ |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Judgments  | Amount \$ _____      |
|   | Type _____   |                      |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Municipal Assessments  | Amount \$ _____      |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Other _____  |                      |
|   | Amount \$ _____  |                      |
- C. If Seller, at any time on or since January 1, 1998, has been obligated to pay support under an order that is on record in any Pennsylvania county, list the county and the Domestic Relations Number or Docket Number: \_\_\_\_\_

14. MULTIPLE LISTING SERVICE (MLS) (Complete if Broker is a member of an MLS)

- ☒ Broker will use a Multiple Listing Service to advertise the Property to other real estate salespersons, who can tell their clients and customers about it. Seller agrees that the MLS, the Broker, and the Licensee are not responsible for mistakes in the MLS description of the Property.
- ☐ Broker will not use a Multiple Listing Service to advertise the Property to other real estate salespersons.

15. PUBLICATION OF SALE PRICE

- A. Seller is aware that newspapers may publish the final sale price after settlement.
- B. Seller will allow publishing of the sale price after Seller accepts an Agreement of Sale.  
☐ Yes ☐ No

16. SIGNS & KEYS Seller allows (where permitted):

- |   |               |   |           |
|---|---------------|---|-----------|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Sale Sign     | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Sold Sign |
| <input type="checkbox"/> Yes <input type="checkbox"/> No            | Key in Office | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Lock Box  |
| <input type="checkbox"/> Yes <input type="checkbox"/> No            | _____         |   |           |

17. ITEMS INCLUDED IN THE PRICE OF THE PROPERTY

- A. Included in the sale and purchase price are all existing items permanently installed in the Property, free of liens, including plumbing; heating; lighting fixtures (including chandeliers and ceiling fans); water treatment systems; pool and spa equipment; garage door openers and transmitters; television antennas; shrubbery, plantings, and unpotted trees; any remaining heating and cooking fuels stored on the Property at the time of settlement; wall to wall carpeting; window covering hardware, shades, and blinds; built-in air conditioners; built-in appliances, and the range/oven. Also included: no JTB
- B. ☐ See attached sheet for additional items included in the sale.

18. ITEMS NOT INCLUDED IN THE PRICE OF THE PROPERTY every

The following items are not included in the purchase and price of the Property:

- A. \_\_\_\_\_
- B. Items rented by the Seller \_\_\_\_\_
- C. ☐ See attached sheet for additional items not included in the sale.

19. SELLER WILL REVEAL DEFECTS & ENVIRONMENTAL HAZARDS

- A. Seller (including Sellers exempt from the Real Estate Seller's Disclosure Act) will disclose all known material defects and/or environmental hazards on a separate disclosure statement. A material defect is a problem or condition that:  
(1) is a possible danger to those living on the Property, or  
(2) has a significant, adverse effect on the value of the Property.
- B. If Seller fails to tell of known material defects and/or environmental hazards,  
(1) Seller will not hold Broker or Licensee responsible in any way;  
(2) Seller will protect Broker and Licensee from any claims, lawsuits, and actions that result;  
(3) Seller will pay all of Broker's and Licensee's costs that result. This includes attorneys' fees and court-ordered payments or settlements (money Broker or Licensee pays to end a lawsuit or claim).

20. IF PROPERTY WAS BUILT BEFORE 1978 The Residential Lead-Based Paint Hazard Reduction Act says that any Seller of property built before 1978 must give the buyer an EPA pamphlet titled *Protect Your Family From Lead in Your Home*. The Seller also must tell the buyer and the Broker what the Seller knows about lead-based paint and lead-based paint hazards that are in or on the property being sold. Seller must tell the buyer how the Seller knows that lead-based paint and lead-based paint hazards are on the property, where the lead-based paint and lead-based paint hazards are, the condition of the painted surfaces, and any other information Seller knows about lead-based paint and lead-based paint hazards on the property. Any Seller of a pre-1978 structure must also give the buyer any records and reports that the Seller has or can get about lead-based paint or lead-based paint hazards in or around the property being sold, the common areas, or other dwellings in multi-family housing. According to the Act, a Seller must give a buyer 10 days (unless Seller and the buyer agree to a different period of time) from the time an Agreement of Sale is signed to have a "risk assessment" or inspection for possible lead-based paint hazards done on the property. Buyers may choose not to have the risk assessment or inspection for lead paint hazards done. If the buyer chooses not to have the assessment or inspection, the buyer must inform the Seller in writing of the choice. The Act does not require the Seller to inspect for lead paint hazards or to correct lead paint hazards on the property. The Act does not apply to housing built in 1978 or later.

**21. DEPOSIT MONEY**

- A. Broker, or any person, Seller and the buyer name in the Agreement of Sale, will keep all deposit monies paid by or for the buyer in an escrow account. If held by Broker, this escrow account will be held as required by real estate licensing laws and regulations. Seller agrees that the person keeping the deposit monies may wait to deposit any uncashed check that is received as deposit money until Seller has accepted an offer.
- B. If Seller joins Broker or Licensee in a lawsuit for the return of deposit monies, Seller will pay Broker's and Licensee's attorneys' fees and costs.

**22. RECOVERY FUND** Pennsylvania has a Real Estate Recovery Fund (the Fund) to repay any person who has received a final court ruling (civil judgment) against a Pennsylvania real estate licensee because of fraud, misrepresentation, or deceit in a real estate transaction. The Fund repays persons who have not been able to collect the judgment after trying all lawful ways to do so. For complete details about the Fund, call (717) 783-3658, or (800) 822-2113 (within Pennsylvania) and (717) 783-4854 (outside Pennsylvania).

**23. TRANSFER OF THIS CONTRACT**

- A. Broker will notify Seller immediately in writing if Broker transfers this Contract to another broker when:
- (1) Broker stops doing business, OR
  - (2) Broker forms a new real estate business, OR
  - (3) Broker joins his business with another.
- Seller agrees that Broker may transfer this Contract to another broker. Broker will notify Seller immediately in writing when a transfer occurs or Broker will lose the right to transfer this Contract. Seller will follow all requirements of this Contract with the new broker.
- B. Should Seller give or transfer the Property, or an ownership interest in it, to anyone during the term of this Contract, all owners will follow the requirements of this Contract.

**24. NOTICE TO PERSONS OFFERING TO SELL OR RENT HOUSING IN PENNSYLVANIA** Federal and state laws make it illegal for Seller, Broker, or anyone to use RACE, COLOR, RELIGION or RELIGIOUS CREED, SEX, DISABILITY (physical or mental), FAMILIAL STATUS (children under 18 years of age), AGE (40 or older), NATIONAL ORIGIN, USE OR HANDLING/TRAINING OF SUPPORT OR GUIDE ANIMALS, or the FACT OF RELATIONSHIP OR ASSOCIATION TO AN INDIVIDUAL KNOWN TO HAVE A DISABILITY as reasons for refusing to sell, show, or rent properties, loan money, or set deposit amounts, or as reasons for any decision relating to the sale of property.

**25. NO OTHER CONTRACTS** Seller will not enter into another listing agreement with another broker that begins before the Ending Date of this Contract.

**26. ADDITIONAL OFFERS** ONCE SELLER ENTERS INTO AN AGREEMENT OF SALE, BROKER IS NOT REQUIRED TO PRESENT OTHER OFFERS.

**27. ENTIRE CONTRACT** This Contract is the entire agreement between Broker and Seller. Any verbal or written agreements that were made before are not a part of this Contract.

**28. CHANGES TO THIS CONTRACT** All changes to this contract must be in writing and signed by Broker and Seller.

**29. SPECIAL INSTRUCTIONS** The Office of Attorney General has not pre-approved any special conditions or additional terms added by any parties. Any special conditions or additional terms in the Contract must comply with the Pennsylvania Plain Language Consumer Contract Act.

**ADDITIONAL INFORMATION (OPTIONAL)**

**30. TAXES, UTILITIES, & ASSOCIATION FEES**

- A. At settlement, Seller will pay one-half of the total Real Estate Transfer Taxes, unless otherwise stated here: \_\_\_\_\_
- B. Real Estate Property Tax Assessment \$ \_\_\_\_\_ Yearly Taxes \$ \_\_\_\_\_  
Wage/Income Tax \_\_\_\_\_ Per Capita Tax \$ \_\_\_\_\_
- C. Estimated Utilities (trash, water, sewer, electric, gas, oil, etc.) \_\_\_\_\_
- D. Association Fees \$ \_\_\_\_\_ Include: \_\_\_\_\_
- E. Other \_\_\_\_\_

**31. BUYER FINANCING** Seller will accept the following arrangements for buyer to pay for the Property:

- ☒ Cash
- ☒ Buyer will apply for a mortgage. Type(s) of mortgages acceptable to Seller are:
- |                              |                             |              |                              |                             |       |
|------------------------------|-----------------------------|--------------|------------------------------|-----------------------------|-------|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | Conventional | <input type="checkbox"/> Yes | <input type="checkbox"/> No | FHA   |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | VA           | <input type="checkbox"/> Yes | <input type="checkbox"/> No | _____ |
- ☐ Seller's help to buyer (if any): \_\_\_\_\_

Seller has read the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.

All Sellers must sign this Contract.

**NOTICE BEFORE SIGNING: IF SELLER HAS LEGAL QUESTIONS, SELLER IS ADVISED TO CONSULT AN ATTORNEY.**

**SELLER** Linda L Bolam **DATE** Jan 20 '2002  
Name (print) \_\_\_\_\_ SS# \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
Phone #s \_\_\_\_\_ FAX # \_\_\_\_\_ E-Mail \_\_\_\_\_

**SELLER** \_\_\_\_\_ **DATE** \_\_\_\_\_  
Name (print) \_\_\_\_\_ SS# \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
Phone #s \_\_\_\_\_ FAX # \_\_\_\_\_ E-Mail \_\_\_\_\_

**SELLER** \_\_\_\_\_ **DATE** \_\_\_\_\_  
Name (print) \_\_\_\_\_ SS# \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
Phone #s \_\_\_\_\_ FAX # \_\_\_\_\_ E-Mail \_\_\_\_\_

**BROKER (Company Name)** Medred Realty Assoc  
**ACCEPTED BY** Robert J Buehler **DATE** Jan 14 2002  
Mailing Address PL 8 Box 22 Dubois PA 15801  
Phone #s (814) 375-4123 FAX # (814) 375-1549 E-Mail \_\_\_\_\_

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, : No. 02-760-CD  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, : Type of Case: Equity  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs :

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other persons :  
claiming any interest in the described :  
property, :  
Defendants :

**FILED**

MAR 13 2003

William A. Shaw  
Prothonotary

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendant Eleanor G. Graff, certify that I sent a true and  
correct copy of the **ANSWER, NEW MATTER and COUNTERCLAIM** by U.S. First Class  
Mail, Postage Prepaid on March 12, 2003 to the following:

Toni M. Cherry, Esquire  
CHERRY & CHERRY  
One North Franklin Street  
DuBois, PA 15801

Timothy J. Fitzwater  
Lisa A. Fitzwater  
146 East Long Ave.  
DuBois, PA 15801

Jay Faust  
Sally Faust  
14 S. Church Street  
DuBois, PA 15801

Daniel Lee  
Eva Lee  
206 East Washington Ave.  
DuBois, PA 15801

Alfred William Wilson  
Sharon Elizabeth Wilson  
129 East Washington Ave.  
DuBois, PA 15801

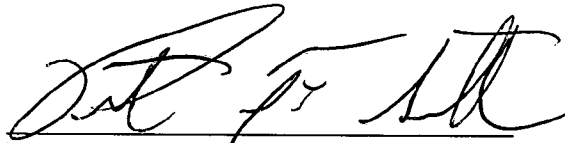
Robert Curley  
155 Schonwalder Rd.  
Clearfield, PA 16830

Lawrence L. Way  
Amy M. Way  
160 East Long Ave.  
DuBois, PA 15801

John E. Farr  
Catherine E. Farr  
138 East Washington Ave.  
DuBois, PA 15801

Respectfully submitted,

Date: March 12, 2003

A handwritten signature in black ink, appearing to read "Peter F. Smith", written over a horizontal line.

Peter F. Smith, Esquire  
Attorney for Defendant, Eleanor G. Graff

FILED

MAR 13 2003

CLERK OF COURT  
JUDICIAL DEPT.  
DUBOIS, PA

**FILED**

2/10/18 *bot*

MAR 13 2003

*no cc*

*C* *ATF*

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY L. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR  
and CATEHRINE E. FARR,

Plaintiffs

vs.

CITY OF DUBOIS and  
ELEANOR G. GRAFF, her successors  
and/or assigns and all other persons  
claiming any interest in the described  
property,

Defendants

: No. 02 – 760 - C.D.  
:  
: Type of Pleading: PLAINTIFFS'  
: PRELIMINARY OBJECTIONS TO  
: ANSWER, NEW MATTER AND  
: COUNTERCLAIM OF  
: DEFENDANT, ELEANOR G. GRAFF  
:  
: Filed on Behalf of: Plaintiffs,  
: TIMOTHY J. FITZWATER, LISA A.  
: FITZWATER, JAY FAUST, SALLY  
: FAUST, LAWRENCE M. WAY, AMY  
: L. WAY, JOHN E. FARR and  
: CATHERINE E. FARR  
:  
:  
:

FILED

APR 03 2003

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02 – 760 - C.D.
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR	:	
and CATEHRINE E. FARR,	:	
Plaintiffs	:	
vs.	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

NOTICE TO PLEAD

TO: ELEANOR G. GRAFF  
c/o Peter F. Smith, Esquire  
P.O. Box 130  
Clearfield, PA 16830

You are hereby notified to file a written response to the enclosed Preliminary Objections within twenty (20) days from the date of service hereof or default judgment may be entered against you.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02 – 760 - C.D.
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR	:	
and CATEHRINE E. FARR,	:	
Plaintiffs	:	
vs.	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

PLAINTIFFS' PRELIMINARY OBJECTIONS TO ANSWER, NEW MATTER AND  
COUNTERCLAIM OF DEFENDANT, ELEANOR G. GRAFF

Plaintiffs preliminarily object to the Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF, as follows:

PRELIMINARY OBJECTIONS RAISING FAILURE TO  
CONFORM TO 42 PA. R.C.P. NO. 1028 (a) (4)

1. The Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF, alleges in Paragraph 59 that a true and correct copy of the sales agreement for the subject properties with Dennis P. Kennelly dated February 6, 2002, is attached hereto and incorporated herein by reference as Defendant Eleanor G. Graff's Exhibit 1.

2. Exhibit 1 of the Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF, is a copy of the Listing Agreement between Defendant, ELEANOR G. GRAFF, and Medred Realty Associates dated January 20, 2002.

3. Pa R.C.P. 1019(h) requires that a pleading shall state specifically whether any claim or defense set forth therein is based upon a writing. If so, the pleader shall attach a copy of the writing, or the material part thereof.

4. Under Pa. R.C.P. 1028(a)(4), a party may preliminarily object by way of demurrer because of a legal insufficiency of a pleading.

WHEREFORE, Plaintiffs, respectfully request that Defendant, ELEANOR G. GRAFF, attach the proper document to her Answer, New Matter and Counterclaim.

PRELIMINARY OBJECTIONS RAISING FAILURE TO

CONFORM TO 42 PA. R.C.P. NO. 1028 (a) (3)

5. Paragraph 64 of the Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF, sets forth that Defendant, ELEANOR G. GRAFF, currently expends \$10,304.38 a year or \$858.70 per month to maintain this residence.

6. Paragraphs 64 of the Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF, violates Pa R.C.P. 1019(f) which requires that items of special damage shall be specifically stated.

7. Paragraphs 64 of the Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF, is not sufficiently specific to enable Plaintiffs to answer and prepare a proper defense.

WHEREFORE, Plaintiffs respectfully requests that this Court order Defendant, ELEANOR G. GRAFF, to more specifically plead the averment of Paragraphs 64 of THE Answer, New Matter and Counterclaim.

PRELIMINARY OBJECTIONS RAISING FAILURE TO

CONFORM TO 42 PA. R.C.P. NO. 1028 (a) (2)


8. Paragraph 62 of the Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF, sets forth that this suit is without merit, privilege or justification and was filed as a form of legal blackmail.

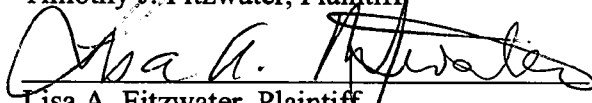
9. Paragraph 66 of the Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF, sets forth that the institution of this action by Plaintiffs is arbitrary, capricious, vexatious and mean-spirited.

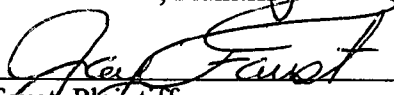
10. The allegations set forth in Paragraph 62 and 66 of the Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF, are scandalous, impertinent, irrelevant, immaterial and inappropriate to the cause of action asserted by Plaintiffs, are in violation of the pleading requirements of Pa. R.C.P. 1019.

WHEREFORE, Plaintiffs respectfully requests that this Court sustain Plaintiffs' Preliminary Objection and strike Paragraphs 62 and 66 of the Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF.

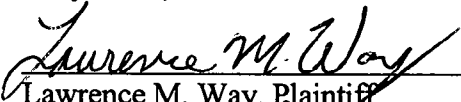
Respectfully submitted,

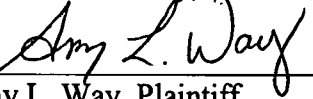
  
Timothy J. Fitzwater, Plaintiff

  
Lisa A. Fitzwater, Plaintiff


  
Jay Faust, Plaintiff

  
Sally Faust, Plaintiff

  
Lawrence M. Way, Plaintiff

  
Amy L. Way, Plaintiff

  
John E. Farr, Plaintiff

  
Catherine E. Farr, Plaintiff

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION-LAW

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM :  
WILSON, SHARON ELIZABETH :  
WILSON, ROBERT CURLEY, :  
JOHN E. FARR, and CATHERINE :  
E. FARR, :

Plaintiffs

vs.

CITY OF DUBOIS and ELEANOR :  
G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest :  
in the described property, :  
Defendants :

No. 02-760-CD

Type of Pleading:

**PLAINTIFFS' WILSONS  
PRELIMINARY OBJECTIONS**

Filed on Behalf of:  
ALFRED WILLIAM WILSON and  
SHARON ELIZABETH WILSON

Counsel of Record for this Party:

Jeffrey S. DuBois  
Supreme Court No. 62074  
Hanak, Guido and Taladay  
498 Jeffers Street  
PO Box 487  
DuBois, PA 15801

814-371-7768

**FILED**

APR 14 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

TIMOTHY J. FITZWATER, et al.	:	
Plaintiff	:	
vs.	:	No. 02-760- CD
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her	:	
successors and/or assigns and all	:	
other persons claiming any	:	
interest in the described	:	
property,	:	
Defendants	:	

**PLAINTIFFS' WILSONS**  
**PRELIMINARY OBJECTIONS TO**  
**DEFENDANT'S COUNTERCLAIM**

AND NOW, comes the Plaintiffs, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, by and through their attorneys, HANAK, GUIDO AND TALADAY, pursuant to Pa.R.C.P. 1028, and hereby presents the following Preliminary Objections to Defendant's Counterclaim:

1. Plaintiffs are ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, and are husband and wife.
2. Defendant Graff has filed an Answer, New Matter and Counterclaim in the above action.
3. Plaintiffs Wilsons object to the same for the reasons set forth herein.
4. On April 8, 2003, Plaintiffs Wilson filed a Petition to Withdraw from the above captioned matter.

5. At all times prior to the filing of this Petition, Plaintiffs Wilson, along with all other Plaintiffs herein, were not represented by counsel.

6. Plaintiffs Wilson object to said Counterclaim filed on behalf of Defendant Graff pursuant to Pa.R.C.P. 1028 in that it sets forth an improper cause of action whereby it infringes upon Plaintiff's right to bring an action against the City of DuBois for quality of living standards where they reside, as well as the fact it is premature to rule on said Counterclaim issue prior to ruling on Plaintiffs' Wilsons' Petition to Withdraw from this case.

WHEREFORE, Plaintiffs Wilsons respectfully request this Honorable Court to dismiss Defendant Graff's Counterclaim and/or rule on Plaintiffs' Petition prior to any action with respect to Defendant's Counterclaim.

Respectfully submitted,



---

Jeffrey S. DuBois  
Attorney for Wilsons



**CERTIFICATE OF SERVICE**

I do hereby certify that on the 14<sup>th</sup> day of April, 2003,  
I served a copy of the within Plaintiffs Wilsons Preliminary Objections  
to Defendant's Counterclaim, by first class mail, postage prepaid, to:

Timothy J. and Lisa A. Fitzwater  
146 East Long Avenue  
DuBois, PA 15801

Jay and Sally Faust  
14 South Church Street  
DuBois, PA 15801

Lawrence M. and Amy L. Way  
160 East Long Avenue  
DuBois, PA 15801


Daniel Lee and Eva Lee  
206 East Washington Avenue  
DuBois, PA 15801

Robert Curley  
144 East Long Avenue  
DuBois, PA 15801

John E. and Catherine E. Farr  
138 E. Washington Avenue  
DuBois, PA 15801

Toni M. Cherry, Esq.  
Gleason, Cherry and Cherry  
P. O. Box 505  
DuBois, PA 15801

Peter F. Smith, Esq.  
30 S. Second Street  
P. O. Box 130  
Clearfield, PA 16830

  
\_\_\_\_\_  
Jeffrey S. DuBois

FILED

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APR 14 2003

Any Dubois

EDS

William A. Shaw  
Prothonotary

C<sup>x</sup>

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION-LAW

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM :  
WILSON, SHARON ELIZABETH :  
WILSON, ROBERT CURLEY, :  
JOHN E. FARR, and CATHERINE :  
E. FARR, :

Plaintiffs

vs.

CITY OF DUBOIS and ELEANOR :  
G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest :  
in the described property, :  
Defendants :

No. 02-760-CD

Type of Pleading:

**PETITION FOR WITHDRAWAL  
FROM CASE**

Filed on Behalf of:  
ALFRED WILLIAM WILSON and  
SHARON ELIZABETH WILSON

Counsel of Record for this Party:

Jeffrey S. DuBois  
Supreme Court No. 62074  
Hanak, Guido and Taladay  
498 Jeffers Street  
PO Box 487  
DuBois, PA 15801

814-371-7768

**FILED**

APR 08 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

TIMOTHY J. FITZWATER, et al.	:	
Plaintiff	:	
vs.	:	No. 02-760- CD
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her	:	
successors and/or assigns and all	:	
other persons claiming any	:	
interest in the described	:	
property,	:	
Defendants	:	

**PETITION FOR WITHDRAWAL**  
**FROM CASE**

AND NOW, comes the Plaintiffs, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, by and through their attorneys, HANAK, GUIDO AND TALADAY, and hereby presents the following Petition for Withdrawal from Case:

1. Plaintiffs are ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, and are husband and wife.
2. This case results from a Complaint initiated by Timothy J. Fitzwater and Lisa A. Fitzwater, and the remainder of the Plaintiffs listed herein, to the above captioned term and number, and filed on May 14, 2002.
3. Plaintiffs Wilson, retired, did not understand or comprehend that this was going to be an actual litigated case filed in the Court of Common Pleas of Clearfield County, Pennsylvania.
4. Plaintiffs Wilson, on the contrary, simply believed that this was a matter between property owners in their neighborhood and the

City of DuBois concerning a dilapidated and abandoned house located in their neighborhood.

5. Plaintiffs Wilson presumed, they, as property owners who were effected by such dilapidated abandoned house in their neighborhood, had the right to present the issue to the City of DuBois.

6. Plaintiffs Wilson only recently became aware of the complexity and extent of involvement in which this case has evolved.

7. There has never been an attorney of record who has entered his or her appearance on behalf of any of the Plaintiffs, and Plaintiffs Wilson never received legal advice prior to or after the aforementioned Complaint was filed in this Honorable Court.

8. The undersigned only recently met with Plaintiffs Wilson to discuss these matters.

9. It is the desire of the Wilsons to remove themselves from this case filed at the above term and number.

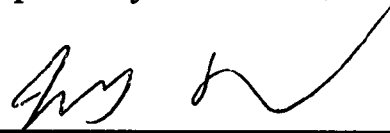
10. Consequently, Plaintiffs Wilson did not knowingly or voluntarily consent to or understand the filing of this suit.

11. Therefore, Plaintiffs Wilson desire to be removed from this lawsuit.

12. The removal of the Wilsons from this lawsuit will not prejudice either of the remaining Plaintiffs nor the Defendants.

WHEREFORE, Plaintiffs Wilson respectfully request this Honorable Court to grant the request for removal of their names from this particular lawsuit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. DuBois', is written over a horizontal line.

Jeffrey S. DuBois  
Attorney for Wilsons

**VERIFICATION**

We, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, verify that the statements in the foregoing Petition are true and correct to the best of our knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

DATE: 4/3/03

Alfred William Wilson  
Alfred William Wilson

DATE: 4/3/03

Sharon Elizabeth Wilson  
Sharon Elizabeth Wilson

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

TIMOTHY J. FITZWATER, et al.  
Plaintiff

vs.

No. 02-760- CD

CITY OF DUBOIS and  
ELEANOR G. GRAFF, her  
successors and/or assigns and all  
other persons claiming any  
interest in the described  
property,

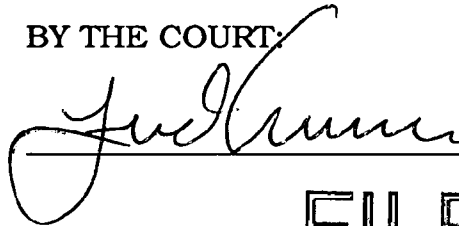
Defendants

**ORDER OF COURT**

AND NOW, this 11 day of April, 2003, upon  
consideration of the within Petition for Withdrawal from Case, a Rule  
is hereby entered upon Defendants, to show cause why ALFRED  
WILLIAM WILSON'S and SHARON ELIZABETH WILSON'S Petition  
should not be granted,

IT IS HEREBY ORDERED AND DECREED that a hearing be held  
on the 20 day of May, 2003, at 2:00 o'clock P  
m., in Courtroom No. 2, of the Clearfield County Courthouse,  
Clearfield, Pennsylvania, 16830.

BY THE COURT:



**FILED**

APR 14 2003

William A. Shaw  
Prothonotary



FILED

3 cc

01:56:24  
APR 14 2003  
Attg Dubois

William A. Shaw  
Prothonotary

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 4<sup>th</sup> day of April, 2003, I served a copy of the within Petition to Withdrawal from Case, by first class mail, postage prepaid, to:

Timothy J. and Lisa A. Fitzwater  
146 East Long Avenue  
DuBois, PA 15801

Jay and Sally Faust  
14 South Church Street  
DuBois, PA 15801

Lawrence M. and Amy L. Way  
160 East Long Avenue  
DuBois, PA 15801

Daniel Lee and Eva Lee  
206 East Washington Avenue  
DuBois, PA 15801

Robert Curley  
144 East Long Avenue  
DuBois, PA 15801

John E. and Catherine E. Farr  
138 E. Washington Avenue  
DuBois, PA 15801

Toni M. Cherry, Esq.  
Gleason, Cherry and Cherry  
P. O. Box 505  
DuBois, PA 15801

Peter F. Smith, Esq.  
30 S. Second Street  
P. O. Box 130  
Clearfield, PA 16830



---

Jeffrey S. DuBois

FILED

4cc to

APR 08 2003

Atty Dubois

(one to Atty without order)



William A. Shaw  
Prothonotary

Daniel and Eva Lee  
206 East Washington Avenue  
DuBois, PA 15801

Honorable Judge Frederic Ammerman,  
Court of Common Pleas of Clearfield County,  
Clearfield, PA 16830

May 12, 2003

Your Honor,

In the Civil Division of the Court of Common Pleas of Clearfield County, an action is currently in progress involving the following two parties (No. 02-760-CD):

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY M. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR

and.

CITY OF DUBOIS, and  
ELEANOR G. GRAFF, her successors.

We, Daniel and Eva Lee, write to you at this time, praying that you will find that we have been misjoined with the initiators of this litigation, Plaintiffs Fitzwater *et al.*

We acknowledge that our signatures appear on the original complaint, No. 02-760-CD. We knowingly signed this complaint in late March, 2002.

In April, 2002, Eva Lee became seriously ill and was eventually confined to bed for most of the summer.

In early May, 2002, as a consequence of Eva's illness, Daniel Lee personally notified Plaintiffs Fitzwater, *et al.* and Mr. Peter Smith, attorney for the Defendants, that Daniel and Eva Lee were compelled to withdraw their participation and interest in the complaint filed.

The withdrawal of Daniel and Eva Lee is evident in that their signatures do not accompany any subsequent claims, replies, or objections, filed in connection with the original complaint.

The Plaintiffs Fitzwater, *et al.*, may be called to attest to the certain withdrawal of the Lees in May, 2003. Cognizant of the circumstances of their withdrawal, the Plaintiffs did not inform Daniel and Eva Lee about their subsequent complaints or filings.

**FILED** <sup>NO</sup> <sup>CC</sup>  
013:50 <sup>101</sup>  
APR 17 2003 <sup>10</sup> <sup>122</sup>  
William A. Shaw  
Prothonotary

**received**  
04/16/03 JAL

Due to the seriousness and long duration of Eva Lee's illness, very many important family details have been neglected, including this letter to the Court indicating withdrawal from legal action. Mail received from the Office of Peter Smith and other attorneys was unopened and/or forwarded to the Plaintiffs who remain joined.

In consideration of the situation described above, Daniel and Eva Lee appeal to Your Honor to find that they have been misjoined with the original Plaintiffs Fitzwater *et al.* If necessary, the Lees would be happy to submit a claim of voluntary nonsuit to the Court.

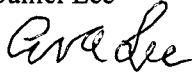
The Lees sincerely hope that the form of this letter clearly conveys their withdrawal from the Plaintiffs in May, 2002, along with the justification for their non-participation in and ignorance of all subsequent legal proceedings relating to Equity Action, No. 02-760-C.D.

The Lees affirm that all of the statements in this letter are true.

Respectfully Submitted,



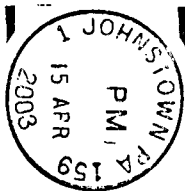
Daniel Lee



Eva Lee

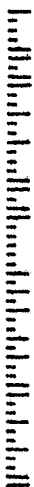
cc: Mr. Peter Smith  
Ms. Toni Cherry  
Plaintiffs

Daniel Lee  
206 E. Washington Ave.  
DuBois, PA 15801



Hon. Judge F. Ammerman  
Clearfield County Judges Chambers  
230 Market St.  
Clearfield, PA 16830

16830/2448



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY :  
L. WAY, DANIEL LEE, EVA LEE, :  
ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR :  
and CATHERINRE E. FARR :

vs.

No. 02-760-CD

CITY OF DUBOIS and ELEANOR :  
G. GRAFF, her successors and/or :  
assigns, and all other persons claiming :  
any interest in the described property :

**FILED**

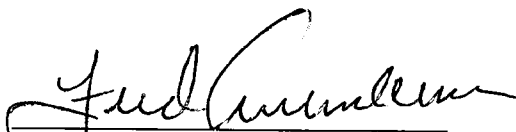
APR 17 2003

William A. Shaw  
Prothonotary

**ORDER**

AND NOW, this 16 day of April, 2003, it is the ORDER of the  
Court that argument on Plaintiffs' Preliminary Objections to Answer, New Matter and  
Counterclaim of Defendant, Eleanor G. Graff in the above matter has been scheduled  
for Tuesday, May 20, 2003 at 2:00 P.M. in Courtroom No. 2, Clearfield County  
Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
Judge

**FILED**

012:5481  
APR 17 2003

ICC to all unrepresented

Piffs & Atty's J. Cherry, P. Smith, &  
~~(~~attorneys~~)~~ J. DuBois

(see attached list)

Er  
GAS

William A. Shaw  
Prothonotary



02-760-CD Fitzwater vs. DuBois etal

Timothy J. Fitzwater  
Lisa A. Fitzwater  
146 E. Long Ave.  
DuBois, PA 15801

Jay Faust  
Sally Faust  
14 South Church St.  
DuBois, PA 15801

Lawrence L. Way  
Amy M. Way  
160 E. Long Ave.  
DuBois, PA 15801

Daniel Lee  
Eva Lee  
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DuBois, PA 15801

John E. Farr  
Catherine E. Farr  
138 E. Long Ave.  
DuBois, PA 15801

Toni M. Cherry  
Gleason, Cherry & Cherry  
PO Box 505  
1 North Franklin St.  
DuBois, PA 15801

Peter F. Smith, Esq.  
PO Box 130  
Clearfield, PA 16830

Jeffrey S. DuBois  
Hanak, Guido, and Taladay  
498 Jeffers St.  
PO Box 487  
DuBois, PA 15801

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY :  
L. WAY, DANIEL LEE, EVA LEE, :  
ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR ;  
and CATHERINRE E. FARR :

vs.

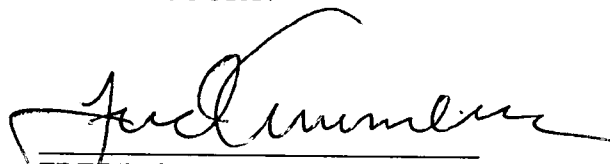
No. 02-760-CD

CITY OF DUBOIS and ELEANOR :  
G. GRAFF, her successors and/or :  
assigns, and all other persons claiming :  
any interest in the described property :

**ORDER**

AND NOW, this 16<sup>th</sup> day of April, 2003, it is the ORDER of the  
Court that argument on Plaintiffs' Wilsons Preliminary Objections in the above matter  
has been scheduled for Tuesday, May 20, 2003 at 2:00 P.M. in Courtroom No. 2,  
Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
Judge

**FILED**

APR 17 2003

William A. Shaw  
Prothonotary

**FILED**

ICC to all unrepresented

PSS, Atty's DeBois, T. Cherry, P. Smith

9/2:47-81

APR 17 2003

61 (see list attached)

*[Signature]*

William A. Shaw  
Prothonotary

02-760-CD Fitzwater vs. DuBois etal

Timothy J. Fitzwater  
Lisa A. Fitzwater  
146 E. Long Ave.  
DuBois, PA 15801

Jay Faust  
Sally Faust  
14 South Church St.  
DuBois, PA 15801

Lawrence L. Way  
Amy M. Way  
160 E. Long Ave.  
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Daniel Lee  
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Toni M. Cherry  
Gleason, Cherry & Cherry  
PO Box 505  
1 North Franklin St.  
DuBois, PA 15801

Peter F. Smith, Esq.  
PO Box 130  
Clearfield, PA 16830

Jeffrey S. DuBois  
Hanak, Guido, and Taladay  
498 Jeffers St.  
PO Box 487  
DuBois, PA 15801

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, \*  
LISA A. FITZWATER, JAY FAUST, \*  
SALLY FAUST, LAWRENCE M. WAY, \*  
AMY M. WAY, DANIEL LEE, \*  
EVA LEE, ALFRED WILLIAM WILSON, \*  
SHARON ELIZABETH WILSON, \*  
ROBERT CURLEY, JOHN E. FARR, \*  
and CATHERINE E. FARR, \*  
Plaintiffs \*

vs. \*

NO. 2002-760-C.D. \*

CITY OF DUBOIS, and \*  
ELEANOR G. GRAFF, \*  
her successors, \*  
Defendants \*

O R D E R

NOW, this 17<sup>th</sup> day of April, 2003, the Court having considered the letter dated May 12, 2003 from Plaintiffs Daniel and Eva Lee; the Court construing the same to be a Motion to Withdraw From the Case, it is the ORDER of this Court that a hearing regarding same be and is hereby scheduled for the 20<sup>th</sup> day of May, 2003 at 2:00 p.m. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

**FILED**

APR 17 2003

William A. Shaw  
Prothonotary

By the Court,



JUDGE FREDRIC J. AMMERMAN

FILED

013:50 RHL  
APR 17 2003  
GHL

William A. Shaw  
Prothonotary

- 1 certified copy to Timothy J. Fitzwater
- 1 certified copy to Lisa A. Fitzwater
- 1 certified copy to Jay Faust
- 1 certified copy to Sally Faust
- 1 certified copy to Lawrence L. Way
- 1 certified copy to Amy M. Way
- 1 certified copy to Daniel Lee
- 1 certified copy to Eva Lee
- ~~-1 certified copy to Alfred William Wilson~~
- ~~-1 certified copy to Sharon Elizabeth Wilson~~
- 1 certified copy to Robert Curley
- 1 certified copy to John E. Farr
- 1 certified copy to Catherine E. Farr
- 2 CC Amy DuBois
- 2 certified copies to Toni M. Cherry, Esquire
- 2 certified copies to Peter Smith
- 1 copy to Court Administrator

see list for addresses

02-760-CD Fitzwater vs. DuBois etal

Timothy J. Fitzwater  
Lisa A. Fitzwater  
146 E. Long Ave.  
DuBois, PA 15801

Jay Faust  
Sally Faust  
14 South Church St.  
DuBois, PA 15801

Lawrence L. Way  
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Gleason, Cherry & Cherry  
PO Box 505  
1 North Franklin St.  
DuBois, PA 15801

Peter F. Smith, Esq.  
PO Box 130  
Clearfield, PA 16830

Jeffrey S. DuBois  
Hanak, Guido, and Taladay  
498 Jeffers St.  
PO Box 487  
DuBois, PA 15801

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: <b>Equity</b>
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	Type of Pleading:
SHARON ELIZABETH WILSON,	:	<b>Answer, New Matter and Counterclaim</b>
ROBERT CURLEY, JOHN E. FARR,	:	<b>Amended Pursuant to</b>
and CATHERINE E. FARR,	:	<b>PA.R.C.P. 1028(c)(1).</b>
Plaintiffs	:	
	:	Filed on Behalf of:
	:	<b>Eleanor G. Graff</b>
vs.	:	Counsel of Record for this Party:
	:	<b>Peter F. Smith</b>
CITY OF DUBOIS and	:	Supreme Court ID #34291
ELEANOR G. GRAFF, her successors	:	P. O. Box 130
and/or assigns and all other persons	:	Clearfield, PA 16830
claiming any interest in the described	:	(814) 765-5595
property,	:	
Defendants	:	Counsel of Record for the City of DuBois:
	:	<b>Toni M. Cherry</b>
	:	Gleason, Cherry and Cherry, L.L.P.
	:	P. O. Box 505
	:	DuBois, PA 15801
	:	(814) 371-5800

**FILED**

APR 29 2003

William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

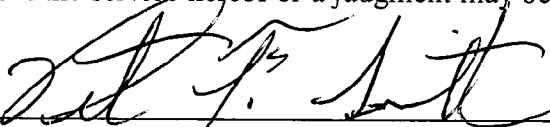
TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

**NOTICE TO DEFEND**

To: Timothy J. Fitzwater and Lisa A. Fitzwater  
Jay Faust and Sally Faust  
Lawrence M. Way and Amy L. Way  
Daniel Lee and Eva Lee  
Alfred William and Sharon Elizabeth Wilson  
Robert Curley  
John E. Farr and Catherine E. Farr

You are hereby notified to file a written response to the enclosed Answer, New Matter and Counterclaim within twenty (20) days from the service hereof or a judgment may be entered against you.

Date: 4/25/03

  
Peter F. Smith, Esquire  
Attorney for Defendant, Eleanor G. Graff  
P. O. Box 130  
30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, : No. 02-760-CD  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs :

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other persons :  
claiming any interest in the described :  
property, :  
Defendants :

***ANSWER, NEW MATTER AND COUNTERCLAIM***  
***Amended Pursuant to PA.R.C.P. 1028(c)(1)***

COMES NOW, Eleanor G. Graff, by her attorney, Peter F. Smith, who answers the  
complaint as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.

8. Admitted.
9. Admitted.
10. Admitted.
11. Denied. Mr. Curley has since moved to 155 Schonwalder Road, Clearfield PA 16830.
12. Admitted.
13. Admitted.
14. Admitted.
15. Denied. This is the former address of Eleanor G. Graff. Eleanor G. Graff currently resides in a residential care facility near LaFayette, Indiana, and further averred that she suffers from Alzheimer. She is completely incapacitated, and her daughter Linda L. Bolam, who resides at 70 Wildwood Place, Lafayette, IN 47905, is her Attorney-in-Fact.
16. Admitted.
17. Admitted.
18. Admitted.
19. Admitted.
20. Admitted.
21. Denied for reasons stated in 11 above.
22. Admitted
23. Admitted.
24. Admitted.
25. Denied. Mrs. Graff's property is not subject to that zoning designation because of the subject property's prior use for multi-family residences.

26. Denied for the reasons set forth in paragraph 25.

27. Denied. Defendant Eleanor G. Graff does not understand what Plaintiffs mean by “located directly”. Defendant demands strict proof of the relevance and materiality of this averment at trial.

28. Denied that the two-family detached dwelling has been vacant for a period in excess of four years and further denied because notwithstanding any periods of vacancy, Defendant Eleanor Graff has not abandoned her right to use the premises for multi-family dwellings.

29. Denied for the reasons set forth in paragraph 28.

30. Denied and admitted in part: The water line broke in 2000, but further averred that Defendant Eleanor Graff is a senior citizen who has had difficulty overseeing these properties. Her physical infirmity cannot and should not be misconstrued as evidence of abandonment.

31. Denied for the reasons set forth in paragraph 30.

32. Denied for the reasons set forth in paragraph 30.

33. Denied. Defendant Eleanor Graff has no direct knowledge of this averment.

34. Denied. Mrs. Graff has made such repairs as she and her Attorney-in-Fact deem necessary. The water line was the only pressing repair that needed to be made.

35. Denied. Utility services is still provided to the premises.

36. Denied for the reasons set forth in paragraphs 25, 28 and 35.

37. Denied for the reasons set forth in paragraphs 25, 28 and 35.

38. Denied as a conclusion of law and denied for the reasons set forth in paragraphs 25, 28 and 35 above.

39. Denied as a conclusion of law and for the reasons set forth in paragraphs 25, 28

and 35 above.

40. Admitted.

41. Admitted.

42. Admitted.

43. Neither admitted nor denied because it is beyond the personal knowledge of Defendant Eleanor G. Graff.

44. Denied. The City of DuBois does have an individual responsible for enforcing its zoning ordinances.

45. Denied. The City of DuBois has never notified Eleanor Graff that the properties at issue in any way violate the City's zoning ordinances.

46. Denied as a conclusion of law.

47. Denied as a conclusion of law for the reasons set forth in paragraphs 25, 28 and 35 above.

48. Denied as a conclusion of law for the reasons set forth in paragraphs 25, 28 and 35 above.

49. Denied. Defendant Eleanor Graff was using her property for multi-family dwellings at the time the Plaintiffs moved into the neighborhood. They are estopped from raising any objection at this point. Additionally, Defendant avers that the continued use of her property for multi-family dwellings will not cause overcrowding, blight, danger or congestion.

50. Denied for the reasons set forth in paragraph 49.

51. Neither admitted nor denied as a statement of law to which no response is required.

52. (sic 52.) Denied as a conclusion of law to which no response is required.

WHEREFORE, Defendant Eleanor G. Graff requests this Honorable Court to enter an Order dismissing the complaint with prejudice.

### ***NEW MATTER***

53. Paragraphs 1 through 52 of the foregoing complaint are incorporated herein by reference as those set forth in full.

54. Plaintiffs' claim is barred by the doctrine of laches. Mrs. Graff's use of the property for multi-family dwellings was established at the time Plaintiffs moved into this neighborhood which was many years ago. The DuBois City Ordinance was adopted in 1989. Plaintiffs allege that the one structure has been empty for four years. They should not be permitted to object at this late date and disrupt Defendant's sale of this property.

55. Plaintiffs are estopped from raising objection to Mrs. Graff's use of her property for multi-family dwellings. This use was established prior to the time any of the Plaintiffs moved into this neighborhood. If they had no objection then and purchased, they cannot equitably raise an objection now.

WHEREFORE, Defendant Eleanor G. Graff prays this Honorable Court to enter an Order dismissing the complaint with prejudice.

### ***COUNTERCLAIM***

56. Paragraphs 1 through 55 of the foregoing complaint and new matter are incorporated herein by reference as those set forth in full.

57. As admitted in paragraphs 41 and 42 of the complaint, the Plaintiffs knew that Defendant Eleanor Graff had entered a legally binding contract to sell the premises and that she

had also engaged the services of Medred Realty as broker, yet the Plaintiffs took no steps to resolve the issues raised in their complaint until after Mrs. Graff's Attorney-in-Fact has entered these legally binding contracts.

58. As admitted in paragraph 43 of the complaint, the Plaintiffs contacted the City of DuBois and alleged a zoning violation with the intent and sole objective of disrupting Defendant's sale of this real estate.

59. A true and correct copy of Defendant Eleanor Graff's sales contract for the subject properties with Dennis P. Kennelly dated February 6, 2002 is attached hereto and incorporated herein by reference as Defendant Eleanor G. Graff's Exhibit 1.

60. The buyer, Dennis P. Kennelly, declined to consummate his purchase of this property because of this litigation brought by Plaintiffs.

61. The sale of this real estate was to close on or before April 15, 2002.

62. This suit is without legal merit, privilege or justification and was filed as a form of legal blackmail.

63. Defendant Eleanor Graff has suffered a substantial financial loss as a result of the Plaintiffs' intentional interference with her real estate sales contract of the subject properties.

64. Currently Mrs. Graff expends \$10,304.38 a year or \$858.70 per month to maintain this real estate.

64a. An Itemization of the annually expenses follows:

i	Property and casualty insurance to Ohio Casualty Group	\$ 763.00
ii	Lawn care and maintenance from 4/30/00 thru 5/1/01	\$ 2,777.07
iii	City of DuBois, Bureau of Water	\$ 392.56
iv	National Fuel Gas	\$ 3,968.05
v	GPU for electric service	\$ 288.41
vi	Property & School taxes	<u>\$ 2,115.27</u>
		\$10,304.36

The foregoing costs are submitted on a representative basis only. They will be supplemented with actual expenditures which have occurred since the date of the Plaintiffs tortuous interference with Defendant Eleanor Graff's sale contract which occur on or about April 15, 2002.

65. Defendant Eleanor Graff has been compelled to retain counsel to defend in this action. She has engaged Peter F. Smith at the rate of \$195.00 per hour.

66. The institution of this action by the Plaintiffs is arbitrary, capricious, vexatious and mean-spirited.

67. Therefore, Eleanor G. Graff is entitled to collect counsel fees and court costs from the Plaintiffs pursuant to 42 Pa. C.S.A. 2503.

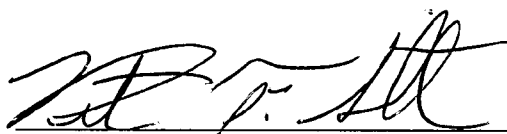
68. Eleanor Graff's damages as a result of Plaintiffs' intentional interference with her contractual rights are:

a. Proceeds from the sale of this real estate to Kennelly	\$58,000.00
b. Ongoing costs of maintaining the property	
@ 858.70 per month	\$ _____
c. Court costs	\$ _____
d. Attorney's fees to Peter F. Smith	\$ _____
PRELIMINARY TOTAL	\$ _____

WHEREFORE, Eleanor G. Graff, prays this Honorable Court to enter an Order to recover her monetary damages in the amount of \$58,000.00 together with ongoing costs of maintaining the real estate, counsel fees, interest from the final date for closing of April 15, 2002 at the statutory rate of 6% and costs as specified above.

Respectfully submitted,

Date: 4/25/03

  
Peter F. Smith, Attorney for Eleanor G. Graff



**AFFIDAVIT**

STATE OF Indiana  
COUNTY OF Tippecanoe

SS

LINDA L. BOLAM, Attorney-in-Fact for ELEANOR G. GRAFF, being duly sworn according to law, deposes and says that she is duly authorized to make this Affidavit as Attorney-in-Fact for Eleanor G. Graff, and further, that the facts set forth in the foregoing Answer, New Matter and Counterclaim, Amended Pursuant to P.A.R.C.P. 1028(c)(1) are true and correct to the best of her knowledge, information and belief

Linda L. Bolam  
Linda L. Bolam  
Attorney-in-Fact for Eleanor G. Graff

SWORN TO AND SUBSCRIBED  
before me this 25 day of  
April, 2003

Erin Allen  
Notary Public  
Erin Allen  
Tippecanoe County  
exp 4-16-08

# STANDARD AGREEMENT FOR THE SALE OF REAL ESTATE

A/S-2K

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of REALTORS® (PAR).

**PA LICENSED BROKER**  
**LISTING BROKER (Company)** Medred Realty  
**ADDRESS** RR #1 Box 22  
Du Bois, Pa  
**PH** 375-Home **FAX** \_\_\_\_\_  
**DESIGNATED AGENT FOR SELLER (if applicable)** \_\_\_\_\_

**PA LICENSED BROKER**  
**SELLING BROKER (Company)** Stimmerich Realty  
**ADDRESS** 150 W. Du Bois Ave  
Du Bois, PA 15801  
**PH** 814-375-8855 **FAX** 371-7145  
**DESIGNATED AGENT FOR BUYER (if applicable)** \_\_\_\_\_

1. **This Agreement**, dated Feb. 6, 2002, is between  
**SELLER(S):** GRAFF ESTATE  
c/o LINDA L. BOLAM, called "Seller," and  
**BUYER(S):** DENNIS P. KENNELLY, SINGLE  
RR #1, BOX 40-C  
REYNOLDSVILLE, PA 15851, called "Buyer."

2. **PROPERTY (1-98)** Seller hereby agrees to sell and convey to Buyer, who hereby agrees to purchase:  
**ALL THAT CERTAIN** lot or piece of ground with buildings and improvements thereon erected, if any, known as:  
133 EAST WASHINGTON AVE.  
in the CITY of Du Bois,  
County of CLEARFIELD in the Commonwealth of Pennsylvania, Zip Code 15801  
Identification (e.g., Tax ID#; Parcel #; Lot, Block; Deed Book, Page, Recording Date) Deed BK 429, pg 70  
MAP # 72-4-811

3. **TERMS (1-00)**  
**(A) Purchase Price** FIFTY-FIVE THOUSAND AND 00/100  
202-16-0254 Eight Thousand and 00/100 PK 2/12/02 Dollars  
which will be paid to Seller by Buyer as follows:  
**(B) Cash or check at signing this Agreement:** \$ 100.00  
**(C) Cash or check within** \_\_\_\_\_ **days of the execution of this Agreement:** \$ 10  
**(D)** \_\_\_\_\_ \$ 57,900.00  
**(E) Cash, cashier's or certified check at time of settlement:** \$ 54,900.00  
**TOTAL** \$ 55,000.00 PK 2/12/02  
**(F) Deposits paid on account of purchase price to be held by Listing Broker, unless otherwise stated here:** 58,000.00  
**(G) Seller's written approval to be on or before:** FEB 11, 2002  
**(H) Settlement to be made on or before:** APRIL 15, 2002  
**(I) Conveyance from Seller will be by fee simple deed of special warranty unless otherwise stated here:** \_\_\_\_\_  
**(J) Payment of transfer taxes will be divided equally between Buyer and Seller unless otherwise stated here:** \_\_\_\_\_  
**(K) At time of settlement, the following will be adjusted pro-rata on a daily basis between Buyer and Seller, reimbursing where applicable: taxes; rents; interest on mortgage assumptions; condominium fees and homeowner association fees, if any; water and/or sewer fees, if any, together with any other lienable municipal service. The charges are to be pro-rated for the period(s) covered: Seller will pay up to and including the date of settlement; Buyer will pay for all days following settlement, unless otherwise stated here:** \_\_\_\_\_

4. **FIXTURES & PERSONAL PROPERTY (1-00)**  
**(A) INCLUDED** in this sale and purchase price are all existing items permanently installed in the Property, free of liens, including plumbing; heating; lighting fixtures (including chandeliers and ceiling fans); water treatment systems; pool and spa equipment; garage door openers and transmitters; television antennas; shrubbery, plantings and unpotted trees; any remaining heating and cooking fuels stored on the Property at the time of settlement; wall to wall carpeting; window covering hardware, shades, blinds; built-in air conditioners; built-in appliances; and the range/oven unless otherwise stated. Also included: Dishwasher, window fans  
**(B) LEASED** items (items not owned by Seller): \_\_\_\_\_  
**(C) EXCLUDED** fixtures and items: \_\_\_\_\_

5. **SPECIAL CLAUSES (1-00)**  
**(A)** ☒ Buyer and Seller have received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.  
**(B)** ☒ Buyer and Seller have received a statement of their respective estimated closing costs before signing this Agreement.  
**(C)** ☒ Buyer has received the Seller's Property Disclosure Statement before signing this Agreement, if required by law. (See Notice, Information Regarding the Seller's Property Disclosure Act.)  
**(D)** ☐ Buyer has received the Deposit Money Notice (for cooperative sales when Listing Broker is holding deposit money) before signing this Agreement.  
**(E) The following are part of this Agreement if checked:**  
☐ Sale & Settlement of Other Property Contingency Addendum (PAR Form 130)  
☐ Sale & Settlement of Other Property Contingency with Right to Continue Marketing Addendum (PAR Form 131)  
☐ Settlement of Other Property Contingency Addendum (PAR Form 133)  
☐ Tenant-Occupied Property Addendum (PAR Form TOP)

F - CONTINGENT ON Buyer OBTAINING FINANCING.

G - CONTINGENT ON APPRAISAL BEING EQUAL OR GREATER THAN OFFER

Buyer Initials: PK

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Seller Initials: 202-16-0254

## 6. MORTGAGE CONTINGENCY (1-00)

☐ WAIVED. This sale is NOT contingent on mortgage financing.☒ ELECTED

(A) This sale is contingent upon Buyer obtaining mortgage financing as follows:

1. Amount of mortgage loan \$ ~~55,000.00~~ 58,000 *DK 2/12/02* *LB 2/16/02*
2. Minimum Term \_\_\_\_\_ years
3. Type of mortgage CONVENTIONAL
4. Interest rate 6.375 %; however, Buyer agrees to accept the interest rate as may be committed by the mortgage lender, not to exceed a maximum interest rate of 8 %.
5. Discount points, loan origination, loan placement and other fees charged by the lender as a percentage of the mortgage loan (excluding any mortgage insurance premiums or VA funding fee) not to exceed \_\_\_\_\_ % of the mortgage loan.

The interest rate and fees provisions required by Buyer are satisfied if a mortgage lender makes available to Buyer the right to guarantee an interest rate at or below the Maximum Interest Rate specified herein with the percentage fees at or below the amount specified herein. Buyer gives Seller the right, at Seller's sole option and as permitted by the lending institution and applicable laws, to contribute financially, without promise of reimbursement, to the Buyer and/or lender to make the above terms available to Buyer.

(B) Within 10 days of the execution of this Agreement, Buyer will make a completed, written mortgage application to a responsible mortgage lending institution. The Selling Broker, if any, otherwise the Listing Broker, is authorized to communicate with the lender for the purposes of assisting in the mortgage loan process.

(C) 1. Upon receipt of a mortgage commitment, Buyer and/or Selling Broker will promptly deliver a copy of the commitment to Listing Broker, if any, otherwise to Seller.

2. Mortgage commitment date MARCH 25, 2002. If a written commitment is not received by Listing Broker, if any, otherwise by Seller, by the above date, Buyer and Seller agree to extend the commitment date until Seller terminates this Agreement in writing.

3. Seller has the option to terminate this Agreement in writing, on or after the mortgage commitment date, if the mortgage commitment:

- a. Is not valid until the date of settlement, OR
- b. Is conditioned upon the sale and settlement of any other property, OR
- c. Contains any other condition not specified in this Agreement.

4. In the event Seller does not terminate this Agreement as provided above, Buyer has the option to terminate this Agreement in writing if the mortgage commitment:

- a. Is not obtained by or valid until the date of settlement, OR
- b. Is conditioned upon the sale and settlement of any other property which do not occur by the date of settlement, OR
- c. Contains any other condition not specified in this Agreement which Buyer is unable to satisfy by the date of settlement.

5. If this Agreement is terminated as specified in paragraphs 6 (C) (2), (3) or (4), all deposit monies paid on account of purchase price will be returned to Buyer. Buyer will be responsible for any premiums for mechanics lien insurance and/or title search, or fee for cancellation of same, if any; AND/OR any premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; AND/OR any appraisal fees and charges paid in advance to mortgage lender.

(D) If the mortgage lender requires repairs to the Property, Buyer will, upon receipt, deliver a copy of the mortgage lender's requirements to Listing Broker, if any, otherwise to Seller. Seller will, within 5 days of receipt of the lender's requirements, notify Buyer whether Seller will make the required repairs at Seller's expense.

1. If Seller chooses to make repairs, Buyer will accept the Property and agree to the RELEASE set forth in paragraph 25 of this Agreement.

2. If Seller chooses not to make the required repairs, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to terminate this Agreement OR make the required repairs at Buyer's expense and with Seller's permission, which will not be unreasonably withheld. If Seller denies Buyer permission to make the required repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(E) Seller Assist

☒ NOT APPLICABLE☐ APPLICABLE. Seller will pay:☐ \$ \_\_\_\_\_, maximum, toward Buyer's costs as permitted by the mortgage lender.☐ \_\_\_\_\_

## FHA/VA, IF APPLICABLE

(F) It is expressly agreed that notwithstanding any other provisions of this contract, Buyer will not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given, in accordance with HUD/FHA or VA requirements, a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than \$ \_\_\_\_\_ (the dollar amount to be inserted is the sales price as stated in this Agreement). Buyer will have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. Buyer should satisfy himself/herself that the price and condition of the Property are acceptable.

Warning: Section 1010 of Title 18, U.S.C., Department of Housing and Urban Development provides, "Whoever for the purpose of . . . influencing in any way the action of such department . . . makes, passes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

(G) U.S. Department of Housing and Urban Development (HUD) NOTICE TO PURCHASERS:

Buyer's Acknowledgement

☒ Buyer has received the HUD Notice "For Your Protection: Get a Home Inspection" (see Notices and Information on Property Condition Inspections). Buyer understands the importance of getting an independent home inspection and has thought about this before signing this Agreement.Buyer's Initials DKDate 2/16/02

(H) Certification We the undersigned, Seller(s) and Buyer(s) party to this transaction each certify that the terms of this contract for purchase are true to the best of our knowledge and belief, and that any other agreement entered into by any of these parties in connection with this transaction is attached to this Agreement.

## 7. INSPECTIONS (1-98)

(A) Seller hereby agrees to permit inspections by authorized appraisers, reputable certifiers, insurer's representatives, surveyors, municipal officials and/or Buyer as may be required by the lending institutions, if any, or insuring agencies. Seller further agrees to permit any other inspections required by or provided for in the terms of this Agreement.

(B) Buyer reserves the right to make a pre-settlement walk-through inspection of the Property. Buyer's right to make this inspection is not waived by any other provision of this Agreement.

(C) Seller will have heating and all utilities (including fuel(s)) on for the inspections.

Buyer Initials: DK

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Seller Initials: LB2/16/02

8. PROPERTY INSPECTION CONTINGENCY (1-00)

☒ WAIVED. Buyer understands that Buyer has the option to request inspections of the Property (see Property Inspection and Environmental Notices). BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

☐ ELECTED

(A) Within \_\_\_\_\_ days of the execution of this Agreement, Buyer, at Buyer's expense, may choose to have inspections and/or certifications completed by licensed or otherwise qualified professionals (see Property Inspection and Environmental Notices). This contingency does not apply to the following existing conditions and/or items: \_\_\_\_\_

(B) Other provisions of this Agreement may provide for inspections and/or certifications that are not waived or altered by Buyer's election here.

(C) If Buyer is not satisfied with the condition of the Property as stated in any written report, Buyer will, within the time given for completing inspections:

☐ Option 1

1. Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR

2. Terminate the Agreement in writing by notice to Listing Broker, if any, otherwise to Seller, within the time given for inspection, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

☐ Option 2

1. Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 25 of this Agreement, UNLESS the total cost to correct the conditions contained in the report(s) is more than \$ \_\_\_\_\_

2. If the total cost to correct the conditions contained in the report(s) EXCEEDS the amount specified in paragraph 8(C) (Option 2) 1, Buyer will deliver the report(s) to Listing Broker, if any, otherwise to Seller, within the time given for inspection.

a. Seller will, within \_\_\_\_\_ days of receiving the report(s), inform Buyer in writing of Seller's choice to:

(1) Make repairs before settlement so that the remaining cost to repair conditions contained in the report(s) is less than or equal to the amount specified in paragraph 8 (C) (Option 2) 1.

(2) Credit Buyer at settlement for the difference between the estimated cost of repairing the conditions contained in the report(s) and the amount specified in paragraph 8 (C) (Option 2) 1. This option must be acceptable to the mortgage lender, if any.

(3) Not make repairs and not credit Buyer at settlement for any defects in conditions contained in the report(s).

b. If Seller chooses to make repairs or credit Buyer at settlement as specified in paragraph 8 (C) (Option 2) 2, Buyer will accept the Property and agree to the RELEASE set forth in paragraph 25 of this Agreement.

c. If Seller chooses not to make repairs and not to credit Buyer at settlement, or if Seller fails to choose any option within the time given, Buyer will, within \_\_\_\_\_ days:

(1) Accept the Property with the information stated in the report(s) and agree to the RELEASE set forth in paragraph 25 of this Agreement; OR

(2) Terminate the Agreement in writing by notice to Listing Broker, if any, otherwise to Seller, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

9. WOOD INFESTATION CONTINGENCY (1-00)

☒ WAIVED. Buyer understands that Buyer has the option to request that the Property be inspected for wood infestation by a certified Pest Control Operator. BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

☐ ELECTED

(A) Within \_\_\_\_\_ days of the execution of this Agreement, Buyer, at Buyer's expense, will obtain a written "Wood-Destroying Insect Infestation Inspection Report" from a certified Pest Control Operator and will deliver it and all supporting documents and drawings provided by the Pest Control Operator to Listing Broker, if any, otherwise to Seller. The report is to be made satisfactory to and in compliance with applicable laws, mortgage and lending institutions, and/or Federal Insuring and Guaranteeing Agency requirements, if any. The inspection will include all readily visible and accessible areas of all structures on the Property except the following structures, which will not be inspected: \_\_\_\_\_

(B) If the inspection reveals evidence of active infestation(s), Seller agrees, at Seller's expense and before settlement, to treat for active infestation(s), in accordance with applicable laws.

(C) If the inspection reveals damage from active infestation(s) or previous infestation(s), Buyer, at Buyer's expense, has the option to obtain a written report by a professional contractor, home inspection service, or structural engineer that is limited to structural damage to the Property caused by wood-destroying organisms and a proposal to repair the damage. Buyer will deliver the structural damage report and corrective proposal to Listing Broker, if any, otherwise to Seller, within \_\_\_\_\_ days of delivering the original inspection report.

(D) Within 5 days of receiving the structural damage report and corrective proposal, Seller will advise Buyer whether Seller will repair, at Seller's expense and before settlement, any structural damage from active or previous infestation(s).

(E) If Seller chooses to repair structural damage revealed by the report, Buyer agrees to accept the Property as repaired and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

(F) If Seller chooses not to repair structural damage revealed by the report or fails to respond within the time given, Buyer, within 5 days of receiving Seller's notice, will notify Seller in writing of Buyer's choice to:

1. Accept the Property with the defects revealed by the inspection, without abatement of price and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR

2. Make the repairs before settlement, if required by the mortgage lender, if any, at Buyer's expense and with Seller's permission, which will not be unreasonably withheld, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement. If Seller denies Buyer permission to make the repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price shall be returned promptly to Buyer and this Agreement will be VOID, OR

3. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

10. RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT NOTICE REQUIRED FOR PROPERTIES BUILT BEFORE 1978 (1-00)

☐ NOT APPLICABLE

☒ APPLICABLE

(A) Seller represents that: (check 1 OR 2)

☐ 1. Seller has no knowledge concerning the presence of lead-based paint and/or lead-based paint hazards in or about the Property.

☐ 2. Seller has knowledge of the presence of lead-based paint and/or lead-based paint hazards in or about the Property. (Provide the basis for determining that lead-based paint and/or hazards exist, the location(s), the condition of the painted surfaces, and other available information concerning Seller's knowledge of the presence of lead-based paint and/or lead-based paint hazards.) \_\_\_\_\_

(B) Records/Reports (check 1 OR 2)

☐ 1. Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in or about the Property.

☐ 2. Seller has provided Buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in or about the Property. (List documents) \_\_\_\_\_

(C) Buyer's Acknowledgement

☐ 1. Buyer has received the pamphlet *Protect Your Family from Lead in Your Home* and has read the Lead Warning Statement contained in this Agreement (See Environmental Notices).

Buyer's Initials \_\_\_\_\_

Date \_\_\_\_\_

☐ 2. Buyer has reviewed Seller's disclosure of known lead-based paint and/or lead-based paint hazards, as identified in paragraph 10(A) and has received the records and reports pertaining to lead-based paint and/or lead-based paint hazards identified in paragraph 10(B).

Buyer's Initials \_\_\_\_\_

Date \_\_\_\_\_

Buyer Initials: DL

Seller Initials: LB

242	(D) RISK ASSESSMENT/INSPECTION: Buyer acknowledges that before Buyer is obligated to buy a residential dwelling built before 1978,	242
243	Buyer has a 10 day period (unless Buyer and Seller agree in writing to a different period of time) to conduct a risk assessment or inspection of	243
244	the Property for the presence of lead-based paint and/or lead-based paint hazards.	244
245	<input checked="" type="checkbox"/> WAIVED. Buyer understands that Buyer has the right to conduct a risk assessment or inspection of the Property to determine the presence of	245
246	lead-based paint and/or lead-based paint hazards. BUYER WAIVES THIS RIGHT and agrees to the RELEASE set forth in paragraph 25 of	246
247	this Agreement.	247
18	<input type="checkbox"/> ELECTED	247
249	1. Buyer, at Buyer's expense, chooses to obtain a risk assessment and/or inspection of the Property for lead-based paint and/or lead-based	249
250	paint hazards. The risk assessment and/or inspection will be completed within _____ days of the execution of this Agreement (insert	250
251	"10" unless Buyer and Seller agree to a different period of time).	251
252	2. Within the time set forth above for obtaining the risk assessment and/or inspection of the Property for lead-based paint and/or	252
253	lead-based paint hazards, Buyer may deliver to Listing Broker, if any, otherwise to Seller, a written list of the specific hazardous	253
254	conditions cited in the report and those corrections requested by Buyer, along with a copy of the risk assessment and/or inspection report.	254
255	3. Seller may, within _____ days of receiving the list and report(s), submit a written corrective proposal to Buyer. The corrective proposal	255
256	will include, but not be limited to, the name of the remediation company and a completion date for corrective measures. Seller will pro-	256
257	vide certification from a risk assessor or inspector that corrective measures have been made satisfactorily on or before the completion date.	257
258	4. Upon receiving the corrective proposal, Buyer, within 5 days, will:	258
259	a. Accept the corrective proposal and the Property in writing, and agree to the RELEASE set forth in paragraph 25 of this Agreement,	259
260	OR	260
261	b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly	261
262	to Buyer and this Agreement will be VOID.	262
263	5. Should Seller fail to submit a written corrective proposal within the time set forth in paragraph 10(D)3 of this Agreement, then Buyer,	263
264	within 5 days, will:	264
265	a. Accept the Property in writing, and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR	265
266	b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly	266
267	to Buyer and this Agreement will be VOID.	267
268	(E) Certification By signing this Agreement, Buyer and Seller certify the accuracy of their respective statements, to the best of their knowledge.	268
269	11. RADON CONTINGENCY (1-00)	269
270	(A) Seller represents that: (check appropriate response(s))	270
271	<input type="checkbox"/> 1. Seller has no knowledge concerning the presence or absence of radon.	271
272	<input type="checkbox"/> 2. Seller has knowledge that the Property was tested on the dates, by the methods (e.g., charcoal canister, alpha track, etc.), and with the	272
273	results of all tests indicated below:	273
274	DATE TYPE OF TEST RESULTS (picocuries/liter or working levels)	274
275	_____	275
276	_____	276
7	_____	277
278	COPIES OF ALL AVAILABLE TEST REPORTS will be delivered to Buyer with this Agreement. SELLER DOES NOT WARRANT	278
279	EITHER THE METHODS OR RESULTS OF THE TESTS.	279
280	<input type="checkbox"/> 3. Seller has knowledge that the Property underwent radon reduction measures on the date(s) and by the method(s) indicated below:	280
281	DATE RADON REDUCTION METHOD	281
282	_____	282
283	_____	283
284	_____	284
285	<input checked="" type="checkbox"/> WAIVED. Buyer understands that Buyer has the option to request that the Property be inspected for radon by a certified inspector (see Radon	285
286	Notice). BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 25 of this Agreement.	286
287	<input type="checkbox"/> ELECTED	287
288	(B) Buyer, at Buyer's expense, has the option to obtain, from a certified inspector, a radon test of the Property and will deliver a copy of the test	288
289	report to Listing Broker, if any, otherwise to Seller, within _____ days of the execution of this Agreement. (See Radon Notice.)	289
290	1. If the test report reveals the presence of radon below 0.02 working levels (4 picocuries/liter), Buyer accepts the Property and agrees to the	290
291	RELEASE set forth in paragraph 25 of this Agreement.	291
292	2. If the test report reveals the presence of radon at or exceeding 0.02 working levels (4 picocuries/liter), Buyer will, within _____ days	292
293	of receipt of the test results:	293
294	<input type="checkbox"/> Option 1	294
295	a. Accept the Property in writing and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR	295
296	b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly	296
297	to Buyer and this Agreement will be VOID, OR	297
298	c. Submit a written, corrective proposal to Listing Broker, if any, otherwise to Seller. The corrective proposal will include, but not be	298
299	limited to, the name of the certified mitigation company; provisions for payment, including retests; and completion date for correc-	299
300	tive measures.	300
301	(1) Within 5 days of receiving the corrective proposal, Seller will:	301
302	(a) Agree to the terms of the corrective proposal in writing, in which case Buyer accepts the Property and agrees to the	302
303	RELEASE set forth in paragraph 25 of this Agreement, OR	303
304	(b) Not agree to the terms of the corrective proposal.	304
305	(2) Should Seller not agree to the terms of the corrective proposal or fail to respond within the time given, Buyer will, within 5	305
306	days, elect to:	306
307	(a) Accept the Property in writing and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR	307
308	(b) Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned	308
309	promptly to Buyer and this Agreement will be VOID.	309
310	<input type="checkbox"/> Option 2	310
311	a. Accept the Property in writing and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR	311
312	b. Submit a written, corrective proposal to Listing Broker, if any, otherwise to Seller. The corrective proposal will include, but not be	312
313	limited to, the name of the certified mitigation company; provisions for payment, including retests; and completion date for correc-	313
314	tive measures. Seller will pay a maximum of \$ _____ toward the total cost of remediation and retests, which will be	314
315	completed by settlement.	315
316	(1) If the total cost of remediation and retests EXCEEDS the amount specified in paragraph 11(B) (Option 2) b, Seller will, within	316
317	5 days of receipt of the cost of remediation, notify Buyer in writing of Seller's choice to:	317
318	(a) Pay for the total cost of remediation and retests, in which case Buyer accepts the Property and agrees to the RELEASE set	318
319	forth in paragraph 25 of this Agreement, OR	319
320	(b) Not pay for the total cost of remediation and retests.	320
321	(2) If Seller chooses not to pay for the total cost of remediation and retests, or if Seller fails to choose either option within the	321
322	time given, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to:	322
323	(a) Pay the difference between Seller's contribution to remediation and retests and the actual cost thereof, in which case	323
324	Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR	324
325	(b) Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly	325
326	to Buyer and this Agreement will be VOID.	326
327		327
328		328
329	Buyer Initials: <u>DK</u>	A/S-2K Page 4 of 8
		Seller Initials: <u>LB</u>
		329

(B) Seller knows of no other potential notices (including violations) and assessments except as follows:

(C) In the event any notices (including violations) and assessments are received after execution of this Agreement and before settlement, Seller will notify Buyer in writing, within 5 days of receiving the notice or assessment, that Seller will:

1. Comply with notices and assessments at Seller's expense, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
2. NOT comply with notices and assessments at Seller's expense, in which case Buyer will notify Seller within 5 days in writing that Buyer will:
  - a. Comply with notices and assessments at Buyer's expense and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR
  - b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

If Buyer fails to notify Seller within the time given, Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

(D) Buyer is advised that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation.

(E) If required by law, within \_\_\_\_\_ days of the execution of this Agreement, Seller will order for delivery to Selling Broker, if any, otherwise to Buyer, on or before settlement,

1. A certification from the appropriate municipal department or departments disclosing notice of any uncorrected violation of zoning, housing, building, safety or fire ordinances, AND/OR
2. A certificate permitting occupancy of the Property. In the event repairs/improvements are required for the issuance of the certificate, Seller will, within 5 days of Seller's receipt of the requirements, notify Buyer of the requirements and whether Seller will make the required repairs/improvements at Seller's expense.

If Seller chooses not to make the required repairs/improvements, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to terminate this Agreement OR make the repairs/improvements at Buyer's expense and with Seller's permission, which will not be unreasonably withheld. If Seller denies Buyer permission to make the required repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

#### 15. TITLE, SURVEYS & COSTS (1-00)

(A) The Property is to be conveyed free and clear of all liens, encumbrances, and easements, EXCEPTING HOWEVER the following: existing deed restrictions, historic preservation restrictions or ordinances, building restrictions, ordinances, easements of roads, easements visible upon the ground, easements of record, privileges or rights of public service companies, if any; otherwise the title to the above described real estate will be good and marketable and such as will be insured by a reputable Title Insurance Company at the regular rates.

(B) In the event Seller is unable to give a good and marketable title and such as will be insured by a reputable Title Company at the regular rates, as specified in paragraph 15(A), Buyer will have the option of taking such title as Seller can give without changing the price or of being repaid all monies paid by Buyer to Seller on account of purchase price and Seller will reimburse Buyer for any costs incurred by Buyer for those items specified in paragraph 15(C) and in paragraph 15(D) items (1), (2), (3); and in the latter event there will be no further liability or obligation on either of the parties hereto and this Agreement will become VOID.

(C) Any survey or surveys which may be required by the Title Insurance Company or the abstracting attorney, for the preparation of an adequate legal description of the Property (or the correction thereof), will be secured and paid for by Seller. However, any survey or surveys desired by Buyer or required by the mortgage lender will be secured and paid for by Buyer.

(D) Buyer will pay for the following: (1) The premium for mechanics lien insurance and/or title search, or fee for cancellation of same, if any; (2) The premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; (3) Appraisal fees and charges paid in advance to mortgage lender, if any; (4) Buyer's customary settlement costs and accruals.

#### 16. ZONING CLASSIFICATION (1-00)

Failure of this Agreement to contain the zoning classification (except in cases where the property [and each parcel thereof, if subdividable] is zoned solely or primarily to permit single-family dwellings) will render this Agreement voidable at the option of the Buyer, and, if voided, any deposits tendered by the Buyer will be returned to the Buyer without any requirement for court action.

Zoning Classification: RESIDENTIAL

☐ ELECTED. Within \_\_\_\_\_ days of the execution of this Agreement, Buyer will verify that the existing use of the Property as \_\_\_\_\_ is permitted. In the event the use is not permitted, Buyer will, within the time given for verification, notify Listing Broker, if any, otherwise Seller, in writing that the existing use of the Property is not permitted and this Agreement will be VOID, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer. Buyer's failure to respond within the time given will constitute a WAIVER of this contingency and all other terms of this Agreement remain in full force and effect.

#### 17. COAL NOTICE

☐ NOT APPLICABLE

☒ APPLICABLE

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHTS OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL SUCH COAL AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. (This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984.) "Buyer acknowledges that he may not be obtaining the right of protection against subsidence resulting from coal mining operations, and that the property described herein may be protected from damage due to mine subsidence by a private contract with the owners of the economic interests in the coal. This acknowledgement is made for the purpose of complying with the provisions of Section 14 of the Bituminous Mine Subsidence and the Land Conservation Act of April 27, 1966." Buyer agrees to sign the deed from Seller which deed will contain the aforesaid provision.

#### 18. POSSESSION (1-98)

(A) Possession is to be delivered by deed, keys and:

1. Physical possession to a vacant building (if any) broom-clean, free of debris at day and time of settlement, AND/OR
2. Assignment of existing lease(s), together with any security deposits and interest, at time of settlement, if Property is tenant-occupied at the execution of this Agreement or unless otherwise specified herein. Buyer will acknowledge existing lease(s) by initialing said lease(s) at time of signing of this Agreement, if Property is tenant-occupied.

(B) Seller will not enter into any new leases, written extension of existing leases, if any, or additional leases for the Property without expressed written consent of Buyer.

19. RECORDING (3-85) This Agreement will not be recorded in the Office for the Recording of Deeds or in any other office or place of public record and if Buyer causes or permits this Agreement to be recorded, Seller may elect to treat such act as a breach of this Agreement.

20. ASSIGNMENT (3-85) This Agreement will be binding upon the parties, their respective heirs, personal representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto, it being expressly understood, however, that Buyer will not transfer or assign this Agreement without the written consent of Seller.

#### 21. DEPOSIT & RECOVERY FUND (1-00)

(A) Deposits paid by Buyer within 30 days of settlement will be by cash, cashier's or certified check. Deposits, regardless of the form of payment and the person designated as payee, will be paid to Broker or party identified in paragraph 3(F), who will retain them in an escrow account until consummation or termination of this Agreement in conformity with all applicable laws and regulations. Any uncashed check tendered as deposit may be held pending the acceptance of this offer.

(B) In the event of a dispute over entitlement to deposit monies, a broker holding the deposit is required by the Rules and Regulations of the State Real Estate Commission (49 Pa. Code §35.327) to retain the monies in escrow until the dispute is resolved. In the event of litigation for the return of deposit monies, a broker will distribute the monies as directed by a final order of court or the written Agreement of the parties. Buyer and Seller agree that, in the event any broker or affiliated licensee is joined in litigation for the return of deposit monies, the attorneys' fees and costs of the broker(s) and licensee(s) will be paid by the party joining them.

Buyer Initials: DK

Seller Initials: LB

(C) A Real Estate Recovery Fund exists to reimburse any persons who have obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation, or deceit in a real estate transaction and who have been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3658, or (800) 822-2113 (within Pennsylvania) and (717) 783-4854 (outside Pennsylvania).

22. CONDOMINIUM/PLANNED COMMUNITY (HOMEOWNER ASSOCIATION) RESALE NOTICE (1-00)

☒ NOT APPLICABLE

☐ APPLICABLE: CONDOMINIUM

Buyer acknowledges that the Property is a unit of a condominium that is primarily run by a unit owners' association. §3407 of the Uniform Condominium Act of Pennsylvania requires Seller to furnish Buyer with a Certificate of Resale and copies of the condominium declaration (other than plats and plans), the bylaws, and the rules and regulations of the association.

☐ APPLICABLE: PLANNED COMMUNITY (HOMEOWNER ASSOCIATION)

Buyer acknowledges that the Property is part of a planned community as defined by the Uniform Planned Community Act. (See Definition of Planned Community Notice for the definition contained in the Act). §5407(a) of the Act requires Seller to furnish Buyer with a copy of the Declaration (other than plats and plans), the bylaws, the rules and regulations of the association, and a Certificate containing the provisions set forth in §5407(a) of the Act.

(A) Within \_\_\_\_\_ days of the execution of this Agreement, Seller will submit a request to the association for a Certificate of Resale and the documents necessary to enable Seller to comply with the Act. The Act provides that the association is required to provide these documents within 10 days of Seller's request.

(B) Under the Act, Seller is not liable to Buyer for the failure or delay of the association to provide the Certificate in a timely manner, nor is Seller liable to Buyer for any erroneous information provided by the association and included in the Certificate.

(C) Buyer may declare this Agreement VOID at any time before Buyer's receipt of the association documents and for 5 days thereafter, OR until settlement, whichever occurs first. Buyer's notice declaring this Agreement void must be in writing; thereafter all deposit monies will be returned to Buyer.

(D) In the event the association has the right to buy the Property (right of first refusal), and the association exercises that right, Seller will reimburse Buyer for all monies paid by Buyer on account of purchase price and for any costs incurred by Buyer for: (1) The premium for mechanics lien insurance and/or title search, or fee for cancellation of same, if any; (2) The premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; (3) Appraisal fees and charges paid in advance to mortgage lender, if any; (4) Buyer's customary settlement costs and accruals.

23. MAINTENANCE & RISK OF LOSS (1-00)

(A) Seller will maintain the Property, grounds, fixtures, and any personal property specifically scheduled herein in its present condition, normal wear and tear excepted.

(B) In the event any system or appliance included in the sale of the Property fails and Seller does not repair or replace the item, Seller will promptly notify Buyer in writing of Seller's choice to:

1. Repair or replace the failed system or appliance before settlement or credit Buyer at settlement for the fair market value of the failed system or appliance (this option must be acceptable to the mortgage lender, if any). In each case, Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR

2. Make no repairs or replacements, and not credit Buyer at settlement for the fair market value of the failed system or appliance, in which case Buyer will notify Seller in writing within 5 days or before settlement, whichever is sooner, that Buyer will:

a. Accept the Property and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR

b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(C) Seller will bear risk of loss from fire or other casualties until time of settlement. In the event of damage by fire or other casualties to any property included in this sale that is not repaired or replaced prior to settlement, Buyer will have the option of rescinding this Agreement and promptly receiving all monies paid on account of purchase price or of accepting the Property in its then condition together with the proceeds of any insurance recovery obtainable by Seller. Buyer is hereby notified that Buyer may insure Buyer's equitable interest in this Property as of the time of execution of this Agreement.

24. WAIVER OF CONTINGENCIES (1-00)

In the event this Agreement is contingent on Buyer's right to inspect and/or repair the Property, Buyer's failure to exercise any of Buyer's options within the time limits specified in the contingency provision(s) will constitute a WAIVER of that contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

25. RELEASE (1-00) Buyer hereby releases, quit claims and forever discharges SELLER, ALL BROKERS, their LICENSEES, EMPLOYEES, and any OFFICER or PARTNER of any one of them and any other PERSON, FIRM, or CORPORATION who may be liable by or through them, from any and all claims, losses or demands, including, but not limited to, personal injuries and property damage and all of the consequences thereof, whether now known or not, which may arise from the presence of termites or other wood-boring insects, radon, lead-based paint hazards, environmental hazards, any defects in the individual on-lot sewage disposal system or deficiencies in the on-site water service system, or any defects or conditions on the Property. This release will survive settlement.

26. REPRESENTATIONS (1-00)

(A) Buyer understands that any representations, claims, advertising, promotional activities, brochures or plans of any kind made by Seller, Brokers, their licensees, employees, officers, or partners are not a part of this Agreement unless expressly incorporated or stated in this Agreement.

(B) It is understood that Buyer has inspected the Property before signing this Agreement (including fixtures and any personal property specifically scheduled herein), or has waived the right to do so, and has agreed to purchase it in its present condition unless otherwise stated in this Agreement. Buyer acknowledges that Brokers, their licensees, employees, officers or partners have not made an independent examination or determination of the structural soundness of the Property, the age or condition of the components, environmental conditions, the permitted uses, or of conditions existing in the locale where the Property is situated; nor have they made a mechanical inspection of any of the systems contained therein.

(C) It is further understood that this Agreement contains the whole agreement between Seller and Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this Agreement will not be altered, amended, changed, or modified except in writing executed by the parties.

(D) The headings, captions, and line numbers in this Agreement are meant only to make it easier to find the paragraphs.

27. TIME OF THE ESSENCE-DEFAULT (1-00)

The said time for settlement and all other times referred to for the performance of any of the obligations of this Agreement are hereby agreed to be of the essence of this Agreement. For the purposes of this Agreement, number of days will be counted from the date of execution, by excluding the day this Agreement was executed and including the last day of the time period. Should Buyer:

(A) Fail to make any additional payments as specified in paragraph 3; OR

(B) Furnish false or incomplete information to Seller, Listing Broker, Selling Broker, or the mortgage lender, if any, concerning Buyer's legal or financial status, or fail to cooperate in the processing of the mortgage loan application, which acts would result in the failure to obtain the approval of a mortgage loan commitment; OR

(C) Violate or fail to fulfill and perform any other terms or conditions of this Agreement; then in such case, Seller has the option of retaining all sums paid by Buyer, including the deposit monies, 1) on account of purchase price, or 2) as monies to be applied to Seller's damages, or 3) as liquidated damages for such breach, as Seller may elect, unless otherwise checked below.

☐ Seller is limited to retaining sums paid by Buyer, including deposit monies, as liquidated damages.

If Seller elects to retain all sums paid by Buyer, including deposit monies, as liquidated damages, Buyer and Seller will be released from further liability or obligation and this Agreement will be VOID.



594 28. BROKERS (1-00) The Business Relationships between the Broker(s) and Seller and Buyer are as follows, UNLESS a different relationship is  
595 checked below.  
596 (A) The Listing Broker is Agent for Seller;  
597 (B) The Selling Broker is Agent for Buyer.  
598 (C) When the Listing Broker and Selling Broker are the same, the Broker is a Dual Agent. Dual Agency applies to all licensees, UNLESS there is  
599 a Designated Agent(s) for Seller and a Designated Agent(s) for Buyer. If the same Licensee is designated for Seller and Buyer, the Licensee is  
600 a Dual Agent.  
601 A Business Relationship exists that is different from above, as follows:  
602 ☐ The Selling Broker is the Agent/Subagent for Seller.  
603 ☐ The Selling Broker is a Transaction Licensee.  
604 ☐ The Listing Broker is a Transaction Licensee.  
605 (D) Broker(s) may perform services to assist unrepresented parties in complying with the terms of this Agreement.

606 29. MEDIATION (7-96)  
607 ☒ NOT AVAILABLE  
608 ☐ WAIVED. Buyer and Seller understand that they may choose to mediate at a later date, should a dispute arise, but that there will be no obli-  
609 gation on the part of any party to do so.  
610 ☐ ELECTED  
611 (A) Buyer and Seller will try to resolve any dispute or claim that may arise from this Agreement through mediation, in accordance with the Rules  
612 and Procedures of the Home Sellers/Home Buyers Dispute Resolution System. Any agreement reached through a mediation conference and  
613 signed by the parties will be binding.  
614 (B) Buyer and Seller acknowledge that they have received, read, and understand the Rules and Procedures of the Home Sellers/Home Buyers  
615 Dispute Resolution System. (See Mediation Notice.)  
616 (C) This agreement to mediate disputes arising from this Agreement will survive settlement.

617  
618 Buyer and Seller acknowledge that they have read and understand the notices and explanatory information set forth in this Agreement.  
619

620 Buyer acknowledges receiving a copy of this Agreement at the time of signing.  
621

622 NOTICE TO PARTIES: WHEN SIGNED, THIS AGREEMENT IS A BINDING CONTRACT. Return by facsimile transmission (FAX) of this  
623 Agreement, and all addenda, bearing the signatures of all parties, constitutes acceptance of this Agreement. Parties to this transaction are advised  
624 to consult an attorney before signing if they desire legal advice.

625  
626 WITNESS Marlene E. Duttry BUYER Dennis Kennedy DATE 2/6/02  
627 Buyer Name (print) DENNIS KENNEDY SS #                       
628 Mailing Address RR1 Box 200 Reynoldsville  
629 Phone #s 653-7879 FAX #                      E-Mail                     

630  
631 WITNESS                      BUYER                      DATE                       
632 Buyer Name (print)                      SS #                       
633 Mailing Address                       
634 Phone #s                      FAX #                      E-Mail                     

635  
636 WITNESS                      BUYER                      DATE                       
637 Buyer Name (print)                      SS #                       
638 Mailing Address                       
639 Phone #s                      FAX #                      E-Mail                     

640  
641 Seller hereby approves the above contract this (date) Linda Bolam 02-16-02  
642 and in consideration of the services rendered in procuring the Buyer, Seller agrees to pay the named Listing Broker a fee of 7%  
643 off from the herein specified sale price. In the event Buyer defaults hereunder, any monies paid on account will be divided 50%  
644 Seller, 50%, Listing Broker, but in no event will the sum paid to the Listing Broker be in excess of the above specified Broker's fee.

645  
646 WITNESS LW Bolam SELLER Linda Bolam DATE 02/16/02  
647 Seller Name (print) LINDA BOLAM SS # 207-38-3650  
648 Mailing Address 70 Wildwood Place, Lafayette IN 47905  
649 Phone #s 765-447-9587 FAX #                      E-Mail                     

650  
651 WITNESS                      SELLER                      DATE                       
652 Seller Name (print)                      SS #                       
653 Mailing Address                       
654 Phone #s                      FAX #                      E-Mail                     

655  
656 WITNESS                      SELLER                      DATE                       
657 Seller Name (print)                      SS #                       
658 Mailing Address                       
659 Phone #s                      FAX #                      E-Mail                     

660  
661 Brokers'/Licensees' Certifications (check all that are applicable):  
662 ☐ Regarding Lead-Based Paint Hazards Disclosure: Required if Property was built before 1978: The undersigned Licensees involved in  
663 this transaction, on behalf of themselves and their brokers, certify that their statements are true to the best of their knowledge and belief.  
664 Acknowledgement: The Licensees involved in this transaction have informed Seller of Seller's obligations under The Residential Lead Paint  
665 Hazard Reduction Act, 42 U.S.C. 4852(d), and are aware of their responsibility to ensure compliance.  
666  
667 ☐ Regarding FHA Mortgages: The undersigned Licensees involved in this transaction, on behalf of themselves and their brokers, certify that  
668 the terms of this contract for purchase are true to the best of their knowledge and belief, and that any other agreement entered into by any of  
669 these parties in connection with this transaction is attached to this Agreement.  
670  
671 ☐ Regarding Mediation: The undersigned ☐ Listing Broker ☐ Selling Broker agree to submit to mediation in accordance with para-  
672 graph 29 of this Agreement.

673  
674 LISTING BROKER (Company Name)                       
675 ACCEPTED BY                      DATE                     

676  
677 SELLING BROKER (Company Name) Stemmerich Realty  
678 ACCEPTED BY Marlene E. Duttry DATE 2/6/02  
679



**FILED**  
D 10:09 BA. No cc  
APR 29 2003 

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: Equity
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendant Eleanor G. Graff, certify that I sent a true and correct copy of the **ANSWER, NEW MATTER and COUNTERCLAIM AMENDED** **PURSUANT to PA.R.C.P. 1028(c)(1)** by U.S. First Class Mail, Postage Prepaid on April 28, 2003 to the following:

Toni M. Cherry, Esquire  
CHERRY & CHERRY  
One North Franklin Street  
DuBois, PA 15801

Timothy J. Fitzwater  
Lisa A. Fitzwater  
146 East Long Ave.  
DuBois, PA 15801

Jay Faust  
Sally Faust  
14 S. Church Street  
DuBois, PA 15801

Daniel Lee  
Eva Lee  
206 East Washington Ave.  
DuBois, PA 15801

Alfred William Wilson  
Sharon Elizabeth Wilson  
129 East Washington Ave.  
DuBois, PA 15801

Robert Curley  
155 Schonwalder Rd.  
Clearfield, PA 16830

**FILED**

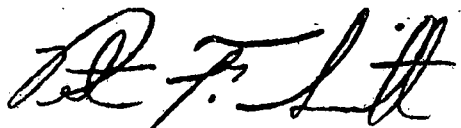
APR 29 2003

William A. Shaw  
Prothonotary

Lawrence L. Way  
Amy M. Way  
160 East Long Ave.  
DuBois, PA 15801

John E. Farr  
Catherine E. Farr  
138 East Washington Ave.  
DuBois, PA 15801

Respectfully submitted,

A handwritten signature in black ink, appearing to read "P. F. Smith", written over a horizontal line.

Peter F. Smith, Esquire  
Attorney for Defendant, Eleanor G. Graff

Date: April 28, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY L. :  
WAY, DANIEL LEE, EVA LEE, :  
ALFRED WILLIAM WILSON, SHARON :  
ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR, and :  
CATHERINE E. FARR, :  
Plaintiffs :

vs. :

CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest :  
in the described property, :  
Defendant :

No. 02- 760 -CD

Type of Case: EQUITY

Type of Pleading: Praecipe  
for Entry of Appearance

Filed on behalf of:  
Plaintiffs,  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy  
L. Way, John E. Farr and  
Catherine E. Farr

Counsel of Record for this  
Party:  
Andrew P. Gates, Esquire

Supreme Court No.: 36604

GATES & SEAMAN  
Attorneys at law  
Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

FILED

MAY 15 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

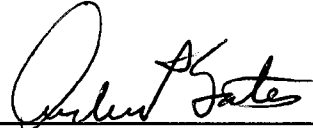
TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL: :  
LEE, EVA LEE, ALFRED WILLIAM WILSON: :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :  
Plaintiffs : No. 02-760-CD  
-vs- : In Equity  
CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest in :  
the described property, :  
Defendant :

PRAECIPE

TO WILLIAM A. SHAW, PROTHONOTARY:

Please enter my appearance on behalf of Plaintiffs, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, JOHN E. FARR and CATHERINE E. FARR, in the above captioned action.

GATES & SEAMAN

BY:   
Andrew P. Gates, Esquire

Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

Date: May 15, 2003

FILED <sup>no cc</sup>  
012:40 <sup>84</sup>  
MAY 15 2003 <sup>REB</sup>

William A. Shaw  
Prathenotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY L. :  
WAY, DANIEL LEE, EVA LEE, :  
ALFRED WILLIAM WILSON, SHARON :  
ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR, and :  
CATHERINE E. FARR, :  
Plaintiffs :

vs. :

CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest :  
in the described property, :  
Defendant :

No. 02- 760 -CD

Type of Case: EQUITY

Type of Pleading: Plaintiffs,  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy L.  
Way, John E. Farr, and  
Catherine E. Farr, Preliminary  
Objections to Defendant,  
Eleanor G. Graff's Amended  
Answer, New Matter and  
Counterclaim

Filed on behalf of: Plaintiffs  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy  
L. Way, John E. Farr and  
Catherine E. Farr

Counsel of Record for this  
Party:  
Andrew P. Gates, Esquire

Supreme Court No.: 36604

GATES & SEAMAN  
Attorneys at law  
Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

**FILED**

MAY 16 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A.	:	
FITZWATER, JAY FAUST, SALLY FAUST,	:	
LAWRENCE M. WAY, AMY L. WAY, DANIEL:	:	
LEE, EVA LEE, ALFRED WILLIAM WILSON:	:	
SHARON ELIZABETH WILSON, ROBERT	:	
CURLEY, JOHN E. FARR and CATHERINE	:	
E. FARR,	:	
	:	
Plaintiffs	:	No. 02-760-CD
	:	
-vs-	:	In Equity
	:	
CITY OF DUBOIS and ELEANOR G.	:	
GRAFF, her successors and/or	:	
assigns claiming any interest in	:	
the described property,	:	
Defendant	:	

**PLAINTIFFS PRELIMINARY OBJECTIONS TO ANSWER, NEW MATTER  
AND COUNTERCLAIM AMENDED PURSUANT TO PA.R.C.P. 1028(C)(1)  
OF DEFENDANT, ELEANOR G. GRAFF**

Plaintiffs, by and through their attorneys, Gates and Seaman, preliminarily object to the Amended Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF, as follows:

**I. PRELIMINARY OBJECTIONS RAISING  
FAILURE TO CONFORM TO 42 PA.R.C.P. NO. 1510(a)**

1. The Counterclaim Amended Pursuant to Pa. R.C.P. 1028(c)(1) of Defendant, ELEANOR G. GRAFF, in Paragraphs 66 and 67 states "The institution of action by Plaintiffs is arbitrary, capricious, vexatious and mean spirited" and seeks counsel fees pursuant to 42 Pa. C.S.A. §2503.

2. Pa. R.C.P. 1510(a) requires that a Defendant may plead as a counterclaim only a cause of action, whether equitable or legal, which arises from the same transaction or occurrence,



or series of transactions or occurrences, from which the Plaintiffs' cause of action arose.

3. Said Defendant's Counterclaim as asserted in Paragraphs 66 and 67 bears no direct relationship to the issues raised in Plaintiffs' Complaint and is otherwise collateral to Plaintiffs' cause of action.

4. Said Defendant's Counterclaim asserted in Paragraphs 66 and 67 is based on the mere fact that Plaintiffs instituted the present proceedings against the Defendants, as they are authorized to do under 53 P.S. §10617, since Defendant Graff has sought to maintain, use and sell the real estate in question in contravention to the City of DuBois Zoning Ordinance.

5. Claims for counsel fees and costs under 42 Pa.C.S.A. §2503 may only be imposed "as part of the taxable costs", at the conclusion of the underlying matter.

6. Under Pa. R.C.P. 1028(a)(4), a party may preliminarily object by way of demurrer because of a legal insufficiency of a pleading.

7. Under Pa. R.C.P. 1028(a)(2), a party may preliminarily object should another parties' pleading fail to conform to law or rule of Court, in this case Pa. R.C.P. §1510(a).

WHEREFORE, Plaintiffs respectfully request that this Court sustain Plaintiffs' Preliminary Objection and strike that portion of Defendant Graff's Counterclaim seeking counsel fees and

costs under 42 Pa. C.S.A. §2503.

**II. PRELIMINARY OBJECTIONS RAISING LEGAL  
INSUFFICIENCY OF PLEADING UNDER PA. R.C.P. §1028(a)(4)**

8. Paragraphs 59 and 60 of the Answer, New Matter and Counterclaim Amended pursuant to Pa.R.C.P. 1028(c)(1) of Defendant, ELEANOR G. GRAFF, sets forth that the Buyer, Dennis P. Kennelly, declined to consummate his purchase of this property in accordance with a Sales Contract dated February 6, 2002, because of this litigation brought by Plaintiffs. A purported copy of said Sales Contract, was attached to said Amended Answer, New Matter and Counterclaim as Exhibit 1.

9. The Sales Agreement of February 6, 2002 referred to in the preceding paragraph contains two special clauses indicating:

(i) Sale is contingent on Buyer obtaining financing;  
and

(ii) Sale is contingent on appraisal being equal or greater than offer. A complete copy of the purported Sales Agreement of February 6, 2002, as was attached to Defendant Graff's Amended Counterclaim as Exhibit 1, is attached hereto as Exhibit "A".

10. Nowhere in Defendant Graff's Amended Counterclaim is there an allegation that either of the contingencies set forth in the preceding paragraph had been fulfilled.

11. No exhibit was attached to Defendant Graff's Amended Counterclaim from which it could be inferred that the contingencies set forth in Paragraph 9 had been fulfilled.

12. Defendant Graff's Amended Counterclaim fails to set forth a claim upon which relief can be granted by this Honorable Court.

13. Under Pa. R.C.P. 1028(a)(4) a party may preliminarily object by way of a demurrer because of a legal insufficiency of a pleading.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to dismiss said Defendant's Counterclaim for intentional interference with her contractual rights.

III. PRELIMINARY OBJECTIONS RAISING  
FAILURE TO CONFORM TO PA. R.C.P. §1028(a)(3)

14. Paragraphs 8 through 13 hereof are incorporated herein by reference as though set forth at length.

15. Paragraph 61 of Defendant Graff's Amended Counterclaim states "the sale of this real estate was to close on or before April 15, 2002".

16. Paragraph 61 of Defendant Graff's Amended Counterclaim fails to substantiate that the sale of the real estate was to close on or before April 15, 2002.

17. Paragraphs 59, 60 and 61 of Defendant Graff's Amended Counterclaim are not sufficiently specific enough to

enable Plaintiffs to answer and prepare a proper defense.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court Order, Defendant, ELEANOR G. GRAFF, to more specifically plead the averments of Paragraphs 59 through 61 of her Amended Counterclaim.

IV. PRELIMINARY OBJECTIONS RAISING FAILURE TO CONFORM TO PA. R.C.P. NO. 1028(a)(2) and (4)

18. The Amended Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF, alleges in paragraph 59 that a true and correct copy of the Sales Agreement for the subject properties with Dennis P. Kennelly, dated February 6, 2002, is attached thereto and incorporated therein by reference as Defendant Eleanor G. Graff's Exhibit 1.

19. Exhibit 1 of said Defendant's Amended Answer, New Matter and Counterclaim is a copy of the Sales Agreement, however, pages 3 and 5 of said Sales Agreement are not attached. A photocopy of said Exhibit 1 is attached hereto and made a part hereof as Exhibit "A".

20. Said Defendant in her Amended Counterclaim did not allege that the portion of the Sales Agreement attached as Exhibit "A" was the material part upon which said Defendants Counterclaim was based.

21. PA R.C.P. 1019(h) requires that a pleading shall state specifically whether any claim or defense set forth therein

is based upon a writing. If so, the pleader shall attach a copy of the writing, or the material part thereof.

22. Under PA R.C.P. 1028(a)(2) a party may preliminarily object should another parties' pleading not conform to law or rule of Court.

23. Under Pa. R.C.P. 1028(a)(4), a party may preliminarily object by way of demurrer because of a legal insufficiency of a pleading.

WHEREFORE, Plaintiffs, respectfully request that Defendant, ELEANOR G. GRAFF, attach the entire Sales Agreement dated February 6, 2002 to her Answer, New Matter and Counterclaim Amended pursuant to PA. R.C.P.1028(c)(1).

V. PRELIMINARY OBJECTIONS RAISING FAILURE TO CONFORM TO 42 PA. R.C.P. NO. 1028(a)(3)

24. Paragraph 64 of the Answer, New Matter and Counterclaim Amended Pursuant to Pa. R.C.P. 1028(c)(1) of Defendant, ELEANOR G. GRAFF, sets forth that Defendant, ELEANOR G. GRAFF, currently expends \$10,304.38 a year or \$858.70 per month to maintain this residence.

25. Paragraph 64 of the Answer, New Matter and Counterclaim Amended Pursuant to Pa.R.C.P. 1028(c)(1) of Defendant ELEANOR G. GRAFF, violates Pa. R.C.P. 1019(f) which requires that items of special damage shall be specifically stated.

26. Paragraph 64(a)(ii) of said Defendants Amended Counterclaim sets forth the amount spent on lawn care and maintenance from 4/30/00 through 5/1/01.

27. Plaintiffs' action was not commenced until May 14, 2002, however, Paragraph 64 of the said Defendant's Amended Counterclaim fails to set forth what expenditures Defendant, ELEANOR G. GRAFF, made during the year ending May 14, 2003.

28. Paragraph 64 of Defendant, ELEANOR G. GRAFF's Amended Counterclaim, is not sufficiently specific to enable Plaintiffs to answer and prepare a proper defense.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court order Defendant, ELEANOR G. GRAFF, to more specifically plead the averment of paragraph 64 of the Answer, New Matter and Counterclaim Amended Pursuant to Pa. R.C.P. 1028(c)(1).

VI. PRELIMINARY OBJECTIONS RAISING FAILURE TO CONFORM TO 42 PA. R.C.P. NO. 1028(a)(2)

29. Paragraph 62 of Defendant, ELEANOR G. GRAFF's Amended Counterclaim, sets forth that this suit is without merit, privilege or justification and was filed as a form of legal blackmail.

30. Paragraph 66 of said Defendant's Amended Counterclaim sets forth that the institution of this action by Plaintiffs is arbitrary, capricious, vexatious and mean-spirited.

31. The allegations in paragraphs 62 and 66 of said

Defendants Amended Counterclaim do nothing more than attempt to impugn Plaintiffs' character, honesty and motive in bringing this action, while at the same time said allegations have no bearing on said Defendants' counterclaim for interference with her contractual rights.

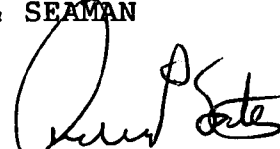
32. The allegations set forth in Paragraphs 62 and 66 of said Defendants' Amended Counterclaim are scandalous, impertinent, irrelevant, immaterial and inappropriate to the cause of action asserted by Plaintiffs, and are in violation of the pleading requirements of Pa. R.C.P. 1019(a).

WHEREFORE, Plaintiffs respectfully request that this Court sustain Plaintiffs' Preliminary Objection and strike Paragraphs 62 and 66 of Defendant, ELEANOR G. GRAFF's Amended Counterclaim.

Respectfully submitted,

GATES & SEAMAN

By:



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Andrew P. Gates, Esquire  
Attorney for Plaintiffs,  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy L.  
Way, John E. Farr, and  
Catherine E. Farr

**PA LICENSED BROKER**  
LISTING BROKER (Company) Realty  
ADDRESS RR #1 Box 22  
Du Bois, Pa  
PH 375-Home FAX  
DESIGNATED AGENT FOR SELLER (if applicable)

**PA LICENSED BROKER**  
SELLING BROKER (Company) Attorneys  
ADDRESS 158 W. Du Bois Ave.  
Du Bois, PA 15801  
PH 814-375-8855 FAX 371-7145  
DESIGNATED AGENT FOR BUYER (if applicable)

1. This Agreement, dated Feb. 6, 2002, is between  
SELLER(S): GRAFF ESTATE  
10 LINDA L. BOLAM  
BUYER(S): DENNIS P. KENNELLY, SINGLE  
RR #1, BOX 40-C  
REYNOLDSVILLE, PA 15851  
2. PROPERTY (1-98) Seller hereby agrees to sell and convey to Buyer, who hereby agrees to purchase:  
ALL THAT CERTAIN lot or piece of ground with buildings and improvements thereon erected, if any, known as:  
133 EAST WASHINGTON AVE.  
in the CITY of Du Bois  
County of CLAREFIELD in the Commonwealth of Pennsylvania, Zip Code 15801  
Identification (e.g., Tax ID#, Parcel #, Lot, Block, Deed Book, Page, Recording Date): Deed BK 429, pg. 70  
MAP # 72-4-811  
3. TERMS (1-00)  
(A) Purchase Price Five Thousand and 00/100  
2002-16-08 Eight Thousand and 00/100 Dollars  
which will be paid to Seller by Buyer as follows:  
(B) Cash or check at signing this Agreement: \$ 100.00  
(C) Cash or check within    days of the execution of this Agreement: \$     
(D)    \$     
(E) Cash, cashier's or certified check at time of settlement: \$ 57,900.00  
TOTAL \$ 58,000.00 PK 2/12/02  
(F) Deposits paid on account of purchase price to be held by Listing Broker, unless otherwise stated here: \$ 58,000.00 PK 2/12/02  
(G) Seller's written approval to be on or before: FEB 11, 2002  
(H) Settlement to be made on or before: APRIL 15, 2002  
(I) Conveyance from Seller will be by fee simple deed of special warranty unless otherwise stated here:  
(J) Payment of transfer taxes will be divided equally between Buyer and Seller unless otherwise stated here:  
(K) At time of settlement, the following will be adjusted pro-rata on a daily basis between Buyer and Seller, reimbursing where applicable: taxes; rents; interest on mortgage assumptions; condominium fees and homeowner association fees, if any; water and/or sewer fees, if any, together with any other lienable municipal service. The changes are to be pro-rated for the period(s) covered: Seller will pay up to and including the date of settlement; Buyer will pay for all days following settlement, unless otherwise stated here:  
4. FIXTURES & PERSONAL PROPERTY (1-00)  
(A) INCLUDED in this sale and purchase price are all existing items permanently installed in the Property, free of liens, including plumbing; heating; lighting fixtures (including chandeliers and ceiling fans); water treatment systems; pool and spa equipment; garage door openers and transmitters; television antennas; shrubbery, plantings and unpotted trees; any remaining heating and cooking fuels stored on the Property at the time of settlement; wall to wall carpeting; window covering hardware, shades, blinds; built-in air conditioners; built-in appliances; and the range/oven unless otherwise stated. Also included: Dishwasher, window fans  
(B) LEASED items (items not owned by Seller):  
(C) EXCLUDED fixtures and items:  
5. SPECIAL CLAUSES (1-00)  
(A) ☒ Buyer and Seller have received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.  
(B) ☒ Buyer and Seller have received a statement of their respective estimated closing costs before signing this Agreement.  
(C) ☒ Buyer has received the Seller's Property Disclosure Statement before signing this Agreement, if required by law. (See Notice, Information Regarding the Seller's Property Disclosure Act.)  
(D) ☐ Buyer has received the Deposit Money Notice (for cooperative sales when Listing Broker is holding deposit money) before signing this Agreement.  
(E) The following are part of this Agreement if checked:  
☐ Sale & Settlement of Other Property Contingency Addendum (PAR Form 130)  
☐ Sale & Settlement of Other Property Contingency with Right to Continue Marketing Addendum (PAR Form 131)  
☐ Settlement of Other Property Contingency Addendum (PAR Form 133)  
☐ Tenant-Occupied Property Addendum (PAR Form TOP)

F - CONTINGENT ON BUYER OBTAINING FINANCING.  
G - CONTINGENT ON APPRAISAL BEING EQUAL OR GREATER THAN OFFER

Buyer Initials: PK

A/S-2K Page 1 of 8

Seller Initials: 2002-16-08



6. MORTGAGE CONTINGENCY (1-00)

- ☐ WAIVED. This sale is NOT contingent on mortgage financing.  
☒ ELECTED

(A) This sale is contingent upon Buyer obtaining mortgage financing as follows:

1. Amount of mortgage loan \$ 55,000.00 58,000 DK 2/1/2/02 LB 2/16/02
2. Minimum Term 30 years
3. Type of mortgage CONVENTIONAL
4. Interest rate 6.75%; however, Buyer agrees to accept the interest rate as may be committed by the mortgage lender, not to exceed a maximum interest rate of 8%.
5. Discount points, loan origination, loan placement and other fees charged by the lender as a percentage of the mortgage loan (excluding any mortgage insurance premiums or VA funding fee) not to exceed 2% of the mortgage loan.

The interest rate and fees provisions required by Buyer are satisfied if a mortgage lender makes available to Buyer the right to guarantee an interest rate at or below the Maximum Interest Rate specified herein with the percentage fees at or below the amount specified herein. Buyer gives Seller the right, at Seller's sole option and as permitted by the lending institution and applicable laws, to contribute financially, without promise of reimbursement, to the Buyer and/or lender to make the above terms available to Buyer.

(B) Within 10 days of the execution of this Agreement, Buyer will make a completed, written mortgage application to a responsible mortgage lending institution. The Selling Broker, if any, otherwise the Listing Broker, is authorized to communicate with the lender for the purposes of assisting in the mortgage loan process.

(C) 1. Upon receipt of a mortgage commitment, Buyer and/or Selling Broker will promptly deliver a copy of the commitment to Listing Broker, if any, otherwise to Seller.

2. Mortgage commitment date MARCH 25, 2002. If a written commitment is not received by Listing Broker, if any, otherwise by Seller, by the above date, Buyer and Seller agree to extend the commitment date until Seller terminates this Agreement in writing.

3. Seller has the option to terminate this Agreement in writing, on or after the mortgage commitment date, if the mortgage commitment:

- a. Is not valid until the date of settlement, OR
- b. Is conditioned upon the sale and settlement of any other property, OR
- c. Contains any other condition not specified in this Agreement.

4. In the event Seller does not terminate this Agreement as provided above, Buyer has the option to terminate this Agreement in writing if the mortgage commitment:

- a. Is not obtained by or valid until the date of settlement, OR
- b. Is conditioned upon the sale and settlement of any other property which do not occur by the date of settlement, OR
- c. Contains any other condition not specified in this Agreement which Buyer is unable to satisfy by the date of settlement.

5. If this Agreement is terminated as specified in paragraphs 6 (C) (2), (3) or (4), all deposit monies paid on account of purchase price will be returned to Buyer. Buyer will be responsible for any premiums for mechanics lien insurance and/or title search, or fee for cancellation of same, if any; AND/OR any premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; AND/OR any appraisal fees and charges paid in advance to mortgage lender.

(D) If the mortgage lender requires repairs to the Property, Buyer will, upon receipt, deliver a copy of the mortgage lender's requirements to Listing Broker, if any, otherwise to Seller. Seller will, within 5 days of receipt of the lender's requirements, notify Buyer whether Seller will make the required repairs at Seller's expense.

1. If Seller chooses to make repairs, Buyer will accept the Property and agree to the RELEASE set forth in paragraph 25 of this Agreement.
2. If Seller chooses not to make the required repairs, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to terminate this Agreement OR make the required repairs at Buyer's expense and with Seller's permission, which will not be unreasonably withheld. If Seller denies Buyer permission to make the required repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(E) Seller Assist

☒ NOT APPLICABLE

☐ APPLICABLE. Seller will pay:

☐ \$ \_\_\_\_\_, maximum, toward Buyer's costs as permitted by the mortgage lender.

☐

FHA/VA, IF APPLICABLE

(F) It is expressly agreed that notwithstanding any other provisions of this contract, Buyer will not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given, in accordance with HUD/FHA or VA requirements, a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than \$ \_\_\_\_\_ (the dollar amount to be inserted is the sales price as stated in this Agreement). Buyer will have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. Buyer should satisfy himself/herself that the price and condition of the Property are acceptable.

Warning: Section 1010 of Title 18, U.S.C., Department of Housing and Urban Development provides, "Whoever for the purpose of . . . influencing in any way the action of such department . . . makes, passes, offers or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

(G) U.S. Department of Housing and Urban Development (HUD) NOTICE TO PURCHASERS:

Buyer's Acknowledgement

☒ Buyer has received the HUD Notice "For Your Protection: Get a Home Inspection" (see Notices and Information on Property Condition Inspections). Buyer understands the importance of getting an independent home inspection and has thought about this before signing this Agreement.

Buyer's Initials DK

Date 2/16/02

(H) Certification We the undersigned, Seller(s) and Buyer(s) party to this transaction each certify that the terms of this contract for purchase are true to the best of our knowledge and belief, and that any other agreement entered into by any of these parties in connection with this transaction is attached to this Agreement.

7. INSPECTIONS (1-00)

(A) Seller hereby agrees to permit inspections by authorized appraisers, reputable certifiers, insurer's representatives, surveyors, municipal officials and/or Buyer as may be required by the lending institutions, if any, or insuring agencies. Seller further agrees to permit any other inspections required by or provided for in the terms of this Agreement.

(B) Buyer reserves the right to make a pre-settlement walk-through inspection of the Property. Buyer's right to make this inspection is not waived by any other provision of this Agreement.

(C) Seller will have heating and all utilities (including fuel(s)) on for the inspections.

Buyer Initials: DK

Seller Initials: LB  
2/16/02

243 (D) Risk Assessment and Inspection. Buyer acknowledges that before Buyer is obligated to buy a residential dwelling built before 1978, 244 Buyer has a 10-day period (unless Buyer and Seller agree in writing to a different period of time to conduct a risk assessment or inspection of 245 the Property for the presence of lead-based paint and/or lead-based paint hazards. 246 ☒ WAIVED. Buyer understands that Buyer has the right to conduct a risk assessment or inspection of the Property to determine the presence of 247 lead-based paint and/or lead-based paint hazards. BUYER WAIVES THIS RIGHT and agrees to the RELEASE set forth in paragraph 25 of 248 this Agreement. 249 ☐ ELECTED 250 1. Buyer, at Buyer's expense, chooses to obtain a risk assessment and/or inspection of the Property for lead-based paint and/or lead-based 251 paint hazards. The risk assessment and/or inspection will be completed within \_\_\_\_\_ days of the execution of this Agreement (insert 252 "10" unless Buyer and Seller agree to a different period of time). 253 2. Within the time set forth above for obtaining the risk assessment and/or inspection of the Property for lead-based paint and/or 254 lead-based paint hazards, Buyer may deliver to Listing Broker, if any, otherwise to Seller, a written list of the specific hazardous 255 conditions cited in the report and those corrections requested by Buyer, along with a copy of the risk assessment and/or inspection report. 256 3. Seller may, within \_\_\_\_\_ days of receiving the list and report(s), submit a written corrective proposal to Buyer. The corrective proposal 257 will include, but not be limited to, the name of the remediation company and a completion date for corrective measures. Seller will provide 258 certification from a risk assessor or inspector that corrective measures have been made satisfactorily on or before the completion date. 259 4. Upon receiving the corrective proposal, Buyer, within 5 days, will: 260 a. Accept the corrective proposal and the Property in writing, and agree to the RELEASE set forth in paragraph 25 of this Agreement, 261 OR 262 b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly 263 to Buyer and this Agreement will be VOID. 264 5. Should Seller fail to submit a written corrective proposal within the time set forth in paragraph 10(D)(3) of this Agreement, then Buyer, 265 within 5 days, will: 266 a. Accept the Property in writing, and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR 267 b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly 268 to Buyer and this Agreement will be VOID. 269 (E) Certification. By signing this Agreement, Buyer and Seller certify the accuracy of their respective statements, to the best of their knowledge. 270 II. RADON CONTINGENCY (1-00) 271 (A) Seller represents that: (check appropriate responses) 272 ☐ 1. Seller has no knowledge concerning the presence or absence of radon. 273 ☐ 2. Seller has knowledge that the Property was tested on the dates, by the methods (e.g., charcoal canister, alpha track, etc.), and with the 274 results of all tests indicated below: 275 DATE TYPE OF TEST RESULTS (picocuries/liter or working levels) 276 \_\_\_\_\_ 277 \_\_\_\_\_ 278 COPIES OF ALL AVAILABLE TEST REPORTS will be delivered to Buyer with this Agreement. SELLER DOES NOT WARRANT 279 EITHER THE METHODS OR RESULTS OF THE TESTS. 280 ☐ 3. Seller has knowledge that the Property underwent radon reduction measures on the date(s) and by the method(s) indicated below: 281 DATE RADON REDUCTION METHOD(S) 282 \_\_\_\_\_ 283 \_\_\_\_\_ 284 ☒ WAIVED. Buyer understands that Buyer has the option to request that the Property be inspected for radon by a certified inspector (see Radon 285 Notice). BUYER WAIVES THIS OPTION and agrees to the RELEASE set forth in paragraph 25 of this Agreement. 286 ☐ ELECTED 287 (B) Buyer, at Buyer's expense, has the option to obtain, from a certified inspector, a radon test of the Property and will deliver a copy of the test 288 report to Listing Broker, if any, otherwise to Seller, within \_\_\_\_\_ days of the execution of this Agreement. (See Radon Notice.) 289 1. If the test report reveals the presence of radon below 0.02 working levels (4 picocuries/liter), Buyer accepts the Property and agrees to the 290 RELEASE set forth in paragraph 25 of this Agreement. 291 2. If the test report reveals the presence of radon at or exceeding 0.02 working levels (4 picocuries/liter), Buyer will, within \_\_\_\_\_ days 292 of receipt of the test results: 293 ☐ Option 1 294 a. Accept the Property in writing and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR 295 b. Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned promptly 296 to Buyer and this Agreement will be VOID, OR 297 c. Submit a written, corrective proposal to Listing Broker, if any, otherwise to Seller. The corrective proposal will include, but not be 298 limited to, the name of the certified mitigation company; provisions for payment, including retests; and completion date for correc- 299 tive measures. 300 (1) Within 5 days of receiving the corrective proposal, Seller will: 301 (a) Agree to the terms of the corrective proposal in writing, in which case Buyer accepts the Property and agrees to the 302 RELEASE set forth in paragraph 25 of this Agreement, OR 303 (b) Not agree to the terms of the corrective proposal. 304 (2) Should Seller not agree to the terms of the corrective proposal or fail to respond within the time given, Buyer will, within 5 305 days, elect to: 306 (a) Accept the Property in writing and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR 307 (b) Terminate this Agreement in writing, in which case all deposit monies paid on account of purchase price will be returned 308 promptly to Buyer and this Agreement will be VOID. 309 ☐ Option 2 310 a. Accept the Property in writing and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR 311 b. Submit a written, corrective proposal to Listing Broker, if any, otherwise to Seller. The corrective proposal will include, but not be 312 limited to, the name of the certified mitigation company; provisions for payment, including retests; and completion date for correc- 313 tive measures. Seller will pay a maximum of \$ \_\_\_\_\_ toward the total cost of remediation and retests, which will be 314 completed by settlement. 315 (1) If the total cost of remediation and retests EXCEEDS the amount specified in paragraph 11(B) (Option 2) b, Seller will, within 316 5 days of receipt of the cost of remediation, notify Buyer in writing of Seller's choice to: 317 (a) Pay for the total cost of remediation and retests, in which case Buyer accepts the Property and agrees to the RELEASE set 318 forth in paragraph 25 of this Agreement, OR 319 (b) Not pay for the total cost of remediation and retests. 320 (2) If Seller chooses not to pay for the total cost of remediation and retests, or if Seller fails to choose either option within the 321 time given, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to: 322 (a) Pay the difference between Seller's contribution to remediation and retests and the actual cost thereof, in which case 323 Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR 324 (b) Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly 325 to Buyer and this Agreement will be VOID. 326 327 328 329 Buyer Initials: DK A/S-2K Page 4 of 8 Seller Initials: SB 330

(B) Seller knows of no other potential notices (including violations) and assessments except as follows.

(C) In the event any notices (including violations) and assessments are received after execution of this Agreement and before settlement, Seller will notify Buyer in writing, within 5 days of receiving the notice or assessment, that Seller will:

1. Comply with notices and assessments at Seller's expense, in which case Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR
2. NOT comply with notices and assessments at Seller's expense, in which case Buyer will notify Seller within 5 days in writing that Buyer will:
  - a. Comply with notices and assessments at Buyer's expense and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR
  - b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

If Buyer fails to notify Seller within the time given, Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

(D) Buyer is advised that access to a public road may require issuance of a highway occupancy permit from the Department of Transportation.

(E) If required by law, within \_\_\_\_\_ days of the execution of this Agreement, Seller will order for delivery to Selling Broker, if any, otherwise to Buyer, on or before settlement,

1. A certification from the appropriate municipal department or departments disclosing notice of any uncorrected violation of zoning, housing, building, safety or fire ordinances, AND/OR
2. A certificate permitting occupancy of the Property. In the event repairs/improvements are required for the issuance of the certificate, Seller will, within 5 days of Seller's receipt of the requirements, notify Buyer of the requirements and whether Seller will make the required repairs/improvements at Seller's expense.

If Seller chooses not to make the required repairs/improvements, Buyer will, within 5 days, notify Seller in writing of Buyer's choice to terminate this Agreement OR make the repairs/improvements at Buyer's expense and with Seller's permission, which will not be unreasonably withheld. If Seller denies Buyer permission to make the required repairs, Buyer may, within 5 days of Seller's denial, terminate this Agreement. If Buyer terminates this Agreement, all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

15. TITLE, SURVEYS & COSTS (1-00)

(A) The Property is to be conveyed free and clear of all liens, encumbrances, and easements, EXCEPTING HOWEVER the following: existing deed restrictions, historic preservation restrictions or ordinances, building restrictions, ordinances, easements of roads, easements visible upon the ground, easements of record, privileges or rights of public service companies, if any; otherwise the title to the above described real estate will be good and marketable and such as will be insured by a reputable Title Insurance Company at the regular rates.

(B) In the event Seller is unable to give a good and marketable title and such as will be insured by a reputable Title Company at the regular rates, as specified in paragraph 15(A), Buyer will have the option of taking such title as Seller can give without changing the price or of being repaid all monies paid by Buyer to Seller on account of purchase price and Seller will reimburse Buyer for any costs incurred by Buyer for those items specified in paragraph 15(C) and in paragraph 15(D) items (1), (2), (3); and in the latter event there will be no further liability or obligation on either of the parties hereto and this Agreement will become VOID.

(C) Any survey or surveys which may be required by the Title Insurance Company or the abstracting attorney, for the preparation of an adequate legal description of the Property (or the correction thereof), will be secured and paid for by Seller. However, any survey or surveys desired by Buyer or required by the mortgage lender will be secured and paid for by Buyer.

(D) Buyer will pay for the following: (1) The premium for mechanics lien insurance and/or title search, or fee for cancellation of same, if any; (2) The premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; (3) Appraisal fees and charges paid in advance to mortgage lender, if any; (4) Buyer's customary settlement costs and accruals.

16. ZONING CLASSIFICATION (1-00)

Failure of this Agreement to contain the zoning classification (except in cases where the property (and each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings) will render this Agreement voidable at the option of the Buyer, and, if voided, any deposits tendered by the Buyer will be returned to the Buyer without any requirement for court action.

Zoning Classification: RESIDENTIAL

☐ ELECTED. Within \_\_\_\_\_ days of the execution of this Agreement, Buyer will verify that the existing use of the Property as \_\_\_\_\_ is permitted. In the event the use is not permitted, Buyer will, within the time given for verification, notify Listing Broker, if any, otherwise Seller, in writing that the existing use of the Property is not permitted and this Agreement will be VOID, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer. Buyer's failure to respond within the time given will constitute a WAIVER of this contingency and all other terms of this Agreement remain in full force and effect.

17. COAL NOTICE

☐ NOT APPLICABLE

☒ APPLICABLE

"THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUSE OR INSURE THE TITLE TO THE COAL AND RIGHTS OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL SUCH COAL AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. (This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984.) "Buyer acknowledges that he may not be obtaining the right of protection against subsidence resulting from coal mining operations, and that the property described herein may be protected from damage due to mine subsidence by a private contract with the owners of the economic interests in the coal. This acknowledgement is made for the purpose of complying with the provisions of Section 14 of the Bituminous Mine Subsidence and the Land Conservation Act of April 27, 1966." Buyer agrees to sign the deed from Seller which deed will contain the aforesaid provision.

18. POSSESSION (1-00)

(A) Possession is to be delivered by deed, keys and:

1. Physical possession to a vacant building (if any) broom-clean, free of debris at day and time of settlement, AND/OR
2. Assignment of existing lease(s), together with any security deposits and interest, at time of settlement, if Property is tenant-occupied at the execution of this Agreement or unless otherwise specified herein. Buyer will acknowledge existing lease(s) by initialing said lease(s) at time of signing of this Agreement, if Property is tenant occupied.

(B) Seller will not enter into any new leases, written extension of existing leases, if any, or additional leases for the Property without expressed written consent of Buyer.

19. RECORDING (3-05) This Agreement will not be recorded in the Office for the Recording of Deeds or in any other office or place of public record and if Buyer causes or permits this Agreement to be recorded, Seller may elect to treat such act as a breach of this Agreement.

20. ASSIGNMENT (3-05) This Agreement will be binding upon the parties, their respective heirs, personal representatives, guardians and successors, and to the extent assignable, on the assigns of the parties hereto, it being expressly understood, however, that Buyer will not transfer or assign this Agreement without the written consent of Seller.

21. DEPOSIT & RECOVERY FUND (1-00)

(A) Deposits paid by Buyer within 30 days of settlement will be by cash, cashier's or certified check. Deposits, regardless of the form of payment and the person designated as payee, will be paid to Broker or party identified in paragraph 3(F), who will retain them in an escrow account until consummation or termination of this Agreement in conformity with all applicable laws and regulations. Any uncashed check tendered as deposit may be held pending the acceptance of this offer.

(B) In the event of a dispute over entitlement to deposit monies, a broker holding the deposit is required by the Rules and Regulations of the State Real Estate Commission (49 Pa. Code §35.327) to retain the monies in escrow until the dispute is resolved. In the event of litigation for the return of deposit monies, a broker will distribute the monies as directed by a final order of court or the written Agreement of the parties. Buyer and Seller agree that, in the event any broker or affiliated licensee is joined in litigation for the return of deposit monies, the attorneys' fees and costs of the broker(s) and licensee(s) will be paid by the party joining them.

Buyer Initials: DK

AS-28 Page 6 of 8

Seller Initials: LB

(C) A Real Estate Recovery Fund exists to reimburse any persons who have obtained a final civil judgment against a Pennsylvania real estate licensee owing to fraud, misrepresentation, or deceit in a real estate transaction and who have been unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-3655, or (800) 832-2113 (within Pennsylvania) and (717) 783-4854 (outside Pennsylvania).

**22. CONDOMINIUM/PLANNED COMMUNITY (HOMEOWNER ASSOCIATION) RESALE NOTICE (1-00)**

☒ NOT APPLICABLE

☐ APPLICABLE: CONDOMINIUM

Buyer acknowledges that the Property is a unit of a condominium that is primarily run by a unit owners' association. §3407 of the Uniform Condominium Act of Pennsylvania requires Seller to furnish Buyer with a Certificate of Resale and copies of the condominium declaration (other than plats and plans), the bylaws, and the rules and regulations of the association.

☐ APPLICABLE: PLANNED COMMUNITY (HOMEOWNER ASSOCIATION)

Buyer acknowledges that the Property is part of a planned community as defined by the Uniform Planned Community Act. (See Definition of Planned Community Notice for the definition contained in the Act). §5407(a) of the Act requires Seller to furnish Buyer with a copy of the Declaration (other than plats and plans), the bylaws, the rules and regulations of the association, and a Certificate containing the provisions set forth in §5407(a) of the Act.

(A) Within \_\_\_\_\_ days of the execution of this Agreement, Seller will submit a request to the association for a Certificate of Resale and the documents necessary to enable Seller to comply with the Act. The Act provides that the association is required to provide these documents within 10 days of Seller's request.

(B) Under the Act, Seller is not liable to Buyer for the failure or delay of the association to provide the Certificate in a timely manner, nor is Seller liable to Buyer for any erroneous information provided by the association and included in the Certificate.

(C) Buyer may declare this Agreement VOID at any time before Buyer's receipt of the association documents and for 5 days thereafter, OR until settlement, whichever occurs first. Buyer's notice declaring this Agreement void must be in writing; thereafter all deposit monies will be returned to Buyer.

(D) In the event the association has the right to buy the Property (right of first refusal), and the association exercises that right, Seller will reimburse Buyer for all monies paid by Buyer on account of purchase price and for any costs incurred by Buyer for: (1) The premium for mechanics lien insurance and/or title search, or fee for cancellation of same, if any; (2) The premiums for flood insurance and/or fire insurance with extended coverage, insurance binder charges or cancellation fee, if any; (3) Appraisal fees and charges paid in advance to mortgage lender, if any; (4) Buyer's customary settlement costs and accruals.

**23. MAINTENANCE & RISK OF LOSS (1-00)**

(A) Seller will maintain the Property, grounds, fixtures, and any personal property specifically scheduled herein in its present condition, normal wear and tear excepted.

(B) In the event any system or appliance included in the sale of the Property fails and Seller does not repair or replace the item, Seller will promptly notify Buyer in writing of Seller's choice to:

1. Repair or replace the failed system or appliance before settlement or credit Buyer at settlement for the fair market value of the failed system or appliance (this option must be acceptable to the mortgage lender, if any). In each case, Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement, OR

2. Make no repairs or replacements, and not credit Buyer at settlement for the fair market value of the failed system or appliance, in which case Buyer will notify Seller in writing within 5 days of before settlement, whichever is sooner, that Buyer will:

a. Accept the Property and agree to the RELEASE set forth in paragraph 25 of this Agreement, OR

b. Terminate this Agreement, in which case all deposit monies paid on account of purchase price will be returned promptly to Buyer and this Agreement will be VOID.

(C) Seller will bear risk of loss from fire or other casualties until time of settlement. In the event of damage by fire or other casualties to any property included in this sale that is not repaired or replaced prior to settlement, Buyer will have the option of rescinding this Agreement and promptly receiving all monies paid on account of purchase price or of accepting the Property in its then condition together with the proceeds of any insurance recovery obtainable by Seller. Buyer is hereby notified that Buyer may insure Buyer's equitable interest in this Property as of the time of execution of this Agreement.

**24. WAIVER OF CONTINGENCIES (1-00)**

In the event this Agreement is contingent on Buyer's right to inspect and/or repair the Property, Buyer's failure to exercise any of Buyer's options within the time limits specified in the contingency provision(s) will constitute a WAIVER of that contingency and Buyer accepts the Property and agrees to the RELEASE set forth in paragraph 25 of this Agreement.

**25. RELEASE (1-00)** Buyer hereby releases, quit claims and forever discharges SELLER, ALL BROKERS, their LICENSEES, EMPLOYEES, and any OFFICER or PARTNER of any one of them and any other PERSON, FIRM, or CORPORATION who may be liable by or through them, from any and all claims, losses or demands, including, but not limited to, personal injuries and property damage and all of the consequences thereof, whether now known or not which may arise from the presence of termites or other wood-boring insects, radon, lead-based paint hazards, environmental hazards, any defects in the individual on-lot sewage disposal system or deficiencies in the on-site water service system, or any defects or conditions on the Property. This release will survive settlement.

**26. REPRESENTATIONS (1-00)**

(A) Buyer understands that any representations, claims, advertising, promotional activities, brochures or plans of any kind made by Seller, Brokers, their licensees, employees, officers, or partners are not a part of this Agreement unless expressly incorporated or stated in this Agreement.

(B) It is understood that Buyer has inspected the Property before signing this Agreement (including fixtures and any personal property specifically scheduled herein), or has waived the right to do so, and has agreed to purchase it in its present condition unless otherwise stated in this Agreement. Buyer acknowledges that Brokers, their licensees, employees, officers or partners have not made an independent examination or determination of the structural soundness of the Property, the age or condition of the components, environmental conditions, the permitted uses, or of conditions existing in the locale where the Property is situated; nor have they made a mechanical inspection of any of the systems contained therein.

(C) It is further understood that this Agreement contains the whole agreement between Seller and Buyer and there are no other terms, obligations, covenants, representations, statements or conditions, oral or otherwise of any kind whatsoever concerning this sale. Furthermore, this Agreement will not be altered, amended, changed, or modified except in writing executed by the parties.

(D) The headings, captions, and line numbers in this Agreement are meant only to make it easier to find the paragraphs.

594 28. BROKERS (1-00) The Business Relationships between the Broker(s) and Seller and Buyer are as follows, UNLESS a different relationship is 591  
595 checked below. 595  
596 (A) The Listing Broker is Agent for Seller. 596  
597 (B) The Selling Broker is Agent for Buyer. 597  
598 (C) When the Listing Broker and Selling Broker are the same, the Broker is a Dual Agent. Dual Agency applies to all licensees, UNLESS there is 598  
599 a Designated Agent(s) for Seller and a Designated Agent(s) for Buyer. If the same Licensee is designated for Seller and Buyer, the Licensee is 599  
600 a Dual Agent. 600

601 A Business Relationship exists that is different from above, as follows: 601

602 ☐ The Selling Broker is the Agent/Subagent for Seller. 602

603 ☐ The Selling Broker is a Transaction Licensee. 603

604 ☐ The Listing Broker is a Transaction Licensee. 604

605 (D) Broker(s) may perform services to assist unrepresented parties in complying with the terms of this Agreement. 605

606 29. MEDIATION (7-96) 606

607 ☒ NOT AVAILABLE 607

608 ☒ WAIVED. Buyer and Seller understand that they may choose to mediate at a later date, should a dispute arise, but that there will be no obli- 608  
609 gation on the part of any party to do so. 609

610 ☐ ELECTED 610

611 (A) Buyer and Seller will try to resolve any dispute or claim that may arise from this Agreement through mediation, in accordance with the Rules 611  
612 and Procedures of the Home Sellers/Home Buyers Dispute Resolution System. Any agreement reached through a mediation conference and 612  
613 signed by the parties will be binding. 613

614 (B) Buyer and Seller acknowledge that they have received, read, and understand the Rules and Procedures of the Home Sellers/Home Buyers 614  
615 Dispute Resolution System. (See Mediation Notice.) 615

616 (C) This agreement to mediate disputes arising from this Agreement will survive settlement. 616

617 Buyer and Seller acknowledge that they have read and understand the notices and explanatory information set forth in this Agreement. 617  
618 618

619 Buyer acknowledges receiving a copy of this Agreement at the time of signing. 619  
620 620

621 NOTICE TO PARTIES: WHEN SIGNED, THIS AGREEMENT IS A BINDING CONTRACT. Return by facsimile transmission (FAX) of this 621  
622 Agreement, and all addenda, bearing the signatures of all parties, constitutes acceptance of this Agreement. Parties to this transaction are advised 622  
623 to consult an attorney before signing if they desire legal advice. 623

624 WITNESS Marlene E. Dutton BUYER Dennis Kennedy DATE 2/6/02 624  
625 Buyer Name (print) Dennis Kennedy SS # 207-38-3650 625  
626 Mailing Address RR1 Box 800 626  
627 Phone #s 653-7879 FAX # 653-7879 E-Mail dkennedy@earthlink.net 627

628 WITNESS \_\_\_\_\_ BUYER \_\_\_\_\_ DATE \_\_\_\_\_ 628  
629 Buyer Name (print) \_\_\_\_\_ SS # \_\_\_\_\_ 629  
630 Mailing Address \_\_\_\_\_ 630  
631 Phone #s \_\_\_\_\_ FAX # \_\_\_\_\_ E-Mail \_\_\_\_\_ 631

632 WITNESS \_\_\_\_\_ BUYER \_\_\_\_\_ DATE \_\_\_\_\_ 632  
633 Buyer Name (print) \_\_\_\_\_ SS # \_\_\_\_\_ 633  
634 Mailing Address \_\_\_\_\_ 634  
635 Phone #s \_\_\_\_\_ FAX # \_\_\_\_\_ E-Mail \_\_\_\_\_ 635

636 Seller hereby approves the above contract this (date) Linda Bolam 02-16-02 636  
637 and in consideration of the services rendered in procuring the Buyer, Seller agrees to pay the named Listing Broker a fee of 7% 637  
638 off from the herein specified sale price. In the event Buyer defaults hereunder, any monies paid on account will be divided 50/50 638  
639 Seller, 50/50 Listing Broker, but in no event will the sum paid to the Listing Broker be in excess of the above specified Broker's fee. 639

640 WITNESS LW Bolam SELLER Linda Bolam DATE 02/16/02 640  
641 Seller Name (print) LINDA BOLAM SS # 207-38-3650 641  
642 Mailing Address 70 Wildwood Place, Lafayette TN 37905 642  
643 Phone #s 765-447-9587 FAX # \_\_\_\_\_ E-Mail \_\_\_\_\_ 643

644 WITNESS \_\_\_\_\_ SELLER \_\_\_\_\_ DATE \_\_\_\_\_ 644  
645 Seller Name (print) \_\_\_\_\_ SS # \_\_\_\_\_ 645  
646 Mailing Address \_\_\_\_\_ 646  
647 Phone #s \_\_\_\_\_ FAX # \_\_\_\_\_ E-Mail \_\_\_\_\_ 647

648 WITNESS \_\_\_\_\_ SELLER \_\_\_\_\_ DATE \_\_\_\_\_ 648  
649 Seller Name (print) \_\_\_\_\_ SS # \_\_\_\_\_ 649  
650 Mailing Address \_\_\_\_\_ 650  
651 Phone #s \_\_\_\_\_ FAX # \_\_\_\_\_ E-Mail \_\_\_\_\_ 651

652 Brokers'/Licensees' Certifications (check all that are applicable): 652

653 ☐ Regarding Lead-Based Paint Hazards Disclosure: Required if Property was built before 1978: The undersigned Licensees involved in 653  
654 this transaction, on behalf of themselves and their brokers, certify that their statements are true to the best of their knowledge and belief. 654  
655 Acknowledgement: The Licensees involved in this transaction have informed Seller of Seller's obligations under The Residential Lead Paint 655  
656 Hazard Reduction Act, 42 U.S.C. 4852(d), and are aware of their responsibility to ensure compliance. 656

657 ☐ Regarding FHA Mortgages: The undersigned Licensees involved in this transaction, on behalf of themselves and their brokers, certify that 657  
658 the terms of this contract for purchase are true to the best of their knowledge and belief, and that any other agreement entered into by any of 658  
659 these parties in connection with this transaction is attached to this Agreement. 659

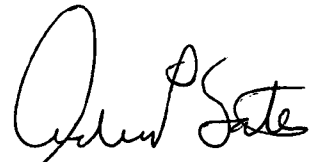
660 ☐ Regarding Mediation: The undersigned ☐ Listing Broker ☐ Selling Broker agree to submit to mediation in accordance with para- 660  
661 graph 29 of this Agreement. 661

662 LISTING BROKER (Company Name) \_\_\_\_\_ 662  
663 ACCEPTED BY \_\_\_\_\_ DATE \_\_\_\_\_ 663

664 SELLING BROKER (Company Name) Stemmerich Realty 664  
665 ACCEPTED BY Marlene E. Dutton DATE 2/6/02 665  
666 666

VERIFICATION

I verify that the statements made in the within PLAINTIFFS PRELIMINARY OBJECTIONS TO ANSWER, NEW MATTER AND COUNTERCLAIM AMENDED PURSUANT TO PA.R.C.P. 1028(C)(1) OF DEFENDANT, ELEANOR G. GRAFF, are true and correct upon the undersigned's information and belief. This verification is made by Plaintiffs' Counsel because Plaintiffs are outside the jurisdiction of this Court and are unavailable for purposes of obtaining their verifications within the time allowed for filing this pleading. The Plaintiffs are the source of the undersigned's information. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.



Andrew P. Gates, Esquire  
Counsel for Timothy J. Fitzwater,  
Lisa A. Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy L.  
Way, John E. Farr, and  
Catherine E. Farr

DATE:

5/16/02

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

No. 02-760-CD      IN EQUITY

TIMOTHY J. FITZWATER, LISA A.  
FITZWATER, JAY FAUST, SALLY FAUST,  
LAWRENCE M. WAY, AMY L. WAY, DANIEL  
LEE, EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON, ROBERT  
CURLEY, JOHN E. FARR and CATHERINE  
E. FARR,  
Plaintiffs

vs.

CITY OF DUBOIS and ELEANOR F. GRAFF,  
her successors and/or assigns  
claiming any interest in the  
described property,  
Defendants

PLAINTIFFS' PRELIMINARY OBJECTIONS  
TO ANSWER, NEW MATTER AND COUNTER-  
CLAIM AMENDED PURSUANT TO Pa.R.C.P.  
1028(C)(1) OF DEFENDANT, ELEANOR G.  
GRAFF

FILED

01352084  
MAY 10 2003

William A. Shaw  
Prothonotary

LAW OFFICES  
GATES & SEAMAN  
2 NORTH FRONT STREET  
P.O. BOX 846  
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL :  
LEE, EVA LEE, ALFRED WILLIAM WILSON :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :

Plaintiffs

No. 02-760-CD

-vs-

In Equity

CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest in :  
the described property, :  
Defendant :

FILED

AFFIDAVIT OF SERVICE

MAY 21 2003

COMMONWEALTH OF PENNSYLVANIA

:  
:SS.

William A. Shaw  
Prothonotary

COUNTY OF CLEARFIELD

:

ANDREW P. GATES, ESQUIRE, of Gates & Seaman, being  
duly sworn according to law, states that he, on May 15, 2003,  
mailed, by regular U. S. Mail, postage prepaid, a true and  
correct copy of Praecipe for Entry of Appearance, as follows:

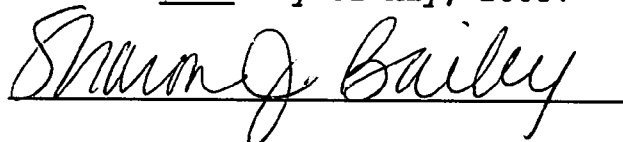
Toni M. Cherry, Esquire  
GLEASON, CHERRY & CHERRY, LLP  
P. O. Box 505  
DuBois, PA 15801

Peter F. Smith, Esquire  
P. O. Box 130  
Clearfield, PA 16830

Jeffrey S. DuBois, Esquire  
498 Jeffers Street  
DuBois, PA 15801

  
\_\_\_\_\_  
Andrew P. Gates, Esquire  
GATES & SEAMAN

Sworn to and subscribed before  
me this 16th day of May, 2003.

  
\_\_\_\_\_  
Sharon J. Bailey

NOTARIAL SEAL  
SHARON J. BAILEY, Notary Public  
Bradford Twp., Clearfield County  
My Commission Expires June 23, 2005



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, et al :

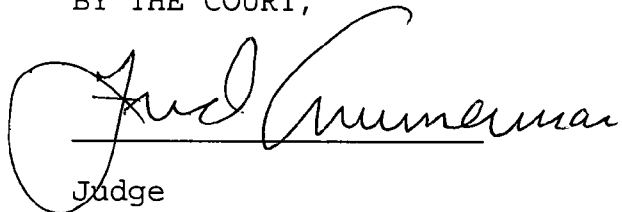
VS. : NO. 02-760-CD

CITY OF DUBOIS, et al :

O R D E R

NOW, this 20th day of May, 2003, the Court noting the preliminary objections filed on May 16, 2003, on behalf of the Plaintiffs therein named, it is the ORDER of this Court that the Court Administrator schedule the same for oral argument, estimated time thereof to be sixty (60) minutes.

BY THE COURT,

  
Judge

FILED

MAY 22 2003

William A. Shaw  
Prothonotary

**FILED**

of 10:15 ~~PM~~  
MAY 22 2003

1 CC each  
party on  
attached list

~~ES~~

William A. Shaw  
Prothonotary

02-760-CD Fitzwater vs. DuBois etal

Andrew P. Gates, Esq.  
PO Box 846  
2 North Front Street  
Clearfield, PA 16830

Daniel Lee  
Eva Lee  
206 E. Washington Ave.  
DuBois, PA 15801

Robert Curley  
144 E. Long Ave.  
DuBois, PA 15801

Toni M. Cherry  
Gleason, Cherry & Cherry  
PO Box 505  
1 North Franklin St.  
DuBois, PA 15801

Peter F. Smith, Esq.  
PO Box 130  
Clearfield, PA 16830

Jeffrey S. DuBois  
Hanak, Guido, and Taladay  
498 Jeffers St.  
PO Box 487  
DuBois, PA 15801

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

TIMOTHY J. FITZWATER, et al :

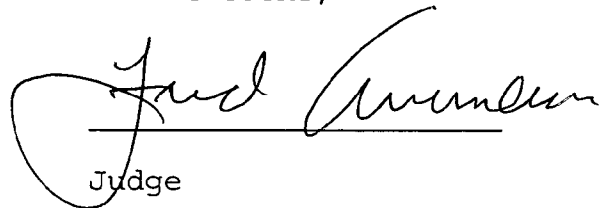
VS. : NO. 02-760-CD

CITY OF DUBOIS, et al :

O R D E R

NOW, this 20th day of May, 2003, this being the date set for argument on the various motions and petitions filed on behalf of various Plaintiffs, it is the ORDER of this Court that the Petition for Withdraw from the case filed by Plaintiffs Alfred Wilson and Sharon Wilson and the pro se "Motion" to Withdraw filed by Plaintiffs Daniel Lee and Eva Lee be dismissed. The Court notes that the preliminary objections filed by the Plaintiff, pro se, to the counterclaim are moot due to the filing of the Amended Complaint.

BY THE COURT,

  
Judge

**FILED**

MAY 22 2003

William A. Shaw  
Prothonotary

**FILED**

1 cc each

party - see attached list

of 10:15 ~~PM~~

MAY 22 1933

~~8/28~~

William A. Shaw  
Prothonotary

02-760-CD Fitzwater vs. DuBois etal

Andrew P. Gates, Esq.  
PO Box 846  
2 North Front Street  
Clearfield, PA 16830

Daniel Lee  
Eva Lee  
206 E. Washington Ave.  
DuBois, PA 15801

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Jeffrey S. DuBois  
Hanak, Guido, and Taladay  
498 Jeffers St.  
PO Box 487  
DuBois, PA 15801

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. FITZWATER, :  
JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, EVA LEE, ALFRED :  
WILLIAM WILSON SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :

Plaintiffs

No. 02-760-CD

-vs-

In Equity

CITY OF DUBOIS and ELEANOR G. GRAFF, her :  
successors and/or assigns claiming any interest in :  
the described property, :

Defendant

**FILED**

MAY 28 2003

AFFIDAVIT OF SERVICE

6/1/55/w  
William A. Shaw  
Prothonotary  
w c/c

COMMONWEALTH OF PENNSYLVANIA :

:SS.

COUNTY OF CLEARFIELD :

ANDREW P. GATES, ESQUIRE, of Gates & Seaman, being duly sworn according to law, states that he, on May 16, 2003, mailed, by regular U. S. Mail, postage prepaid, a true and correct copy of Plaintiffs Preliminary Objections to Defendant Eleanor G. Graff's Amended Answer, New Matter and Counterclaim as follows:

Toni M. Cherry, Esquire  
GLEASON, CHERRY & CHERRY, LLP  
P. O. Box 505  
DuBois, PA 15801

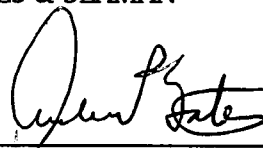
Peter F. Smith, Esquire  
P. O. Box 130  
Clearfield, PA 16830

Jeffrey S. DuBois, Esquire  
498 Jeffers Street  
DuBois, PA 15801

Mr. and Mrs. Daniel Lee  
206 East Washington Avenue  
DuBois, PA 15801

GATES & SEAMAN

By:



Andrew P. Gates, Esquire

Sworn to and subscribed before me

this 19<sup>th</sup> day of May, 2003.



NOTARIAL SEAL  
ROSE M. RAYMOND, Notary Public  
Clearfield Boro, Clearfield County  
My Commission Expires Oct. 28, 2005

RY, L.L.P.

01-0505

*Barry J. Kelly*  
ATTORNEY FOR  
*City of Dubois*



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

TIMOTHY J. FITZWATER,	:	No. 02 - 760 C.D.
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: EQUITY
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	Type of Pleading: ANSWER, NEW
SHARON ELIZABETH WILSON,	:	MATTER AND COUNTERCLAIM
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	Filed on Behalf of: Defendant, CITY OF
	:	DUBOIS
vs.	:	
	:	Counsel of Record for this Party:
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	TONI M. CHERRY, ESQ.
and/or assigns and all other	:	Supreme Court No.: 30205
persons claiming any interest in the	:	
described property,	:	GLEASON, CHERRY AND
Defendants	:	CHERRY, L.L.P.
	:	Attorneys at Law
	:	P. O. Box 505
	:	One North Franklin Street
	:	DuBois, PA 15801
	:	
	:	(814) 371-5800

FILED

MAY 2 2003

0/11/30/03  
William A. Shaw  
Prothonotary

7 CHERRY TO ATT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

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ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs : No. 02 - 760 C.D.

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
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Defendants :

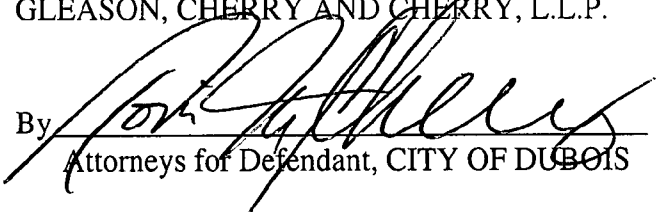
**NOTICE TO PLEAD**

To The Within Plaintiffs:

YOU ARE HEREBY NOTIFIED TO  
PLEAD TO THE WITHIN NEW  
MATTER AND COUNTERCLAIM  
WITHIN TWENTY (20) DAYS FROM  
THE DATE OF SERVICE HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
Attorneys for Defendant, CITY OF DUBOIS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

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vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**A N S W E R**

AND NOW, comes the Defendant, CITY OF DUBOIS, by and through its attorneys,  
GLEASON, CHERRY AND CHERRY, L.L.P., and answers the Complaint of Plaintiffs as  
follows:

1. ADMITTED.
2. ADMITTED.
3. ADMITTED.
4. ADMITTED.
5. ADMITTED.

6. ADMITTED.

7. ADMITTED.

8. ADMITTED.

9. ADMITTED.

10. ADMITTED.

11. DENIED as stated. Defendant, CITY OF DUBOIS, believes and therefore avers that Plaintiff, ROBERT CURLEY, resides at 155 Schonwalder Road, Clearfield, Clearfield County, Pennsylvania 16830.

12. ADMITTED.

13. ADMITTED.

14. ADMITTED.

15. ADMITTED in part and DENIED in part. It is ADMITTED that Defendant, ELEANOR G. GRAFF, previously resided at 133 East Washington Avenue, DuBois, Clearfield County, Pennsylvania. All other aspects of Paragraph 15 are DENIED. ELEANOR G. GRAFF currently resides in a residential care facility near LaFayette, Indiana, and is completely incapacitated because she suffers from Alzheimer's Disease. Her daughter, Linda L. Bolam, is her Attorney-in-Fact and resides at 70 Wildwood Place, LaFayette, Indiana 47905.

16. ADMITTED.

17. ADMITTED.

18. ADMITTED.

19. ADMITTED.

20. ADMITTED.

21. DENIED. Plaintiff, ROBERT CURLEY, is not a tenant of real property located at 144 East Long Avenue, DuBois, Clearfield County, Pennsylvania. On the contrary, ROBERT CURLEY resides at 155 Schonwalder Road, Clearfield, Clearfield County, Pennsylvania 16830.

22. ADMITTED.

23. ADMITTED.

24. ADMITTED.

25. DENIED as stated. The one (1) family detached dwelling located on the premises of ELEANOR G. GRAFF is not a non-conforming use. On the contrary, said one (1) family detached dwelling is specifically permitted in an R-1, Residential District. It is further DENIED that the two (2) family detached dwelling located on said premises is a non-conforming use. On the contrary, multiple-family dwellings which would be three or more units are specifically permitted in an R-1 District under the current ordinances of the CITY OF DUBOIS. Since there are three units located on the Graff property, those units are specifically permitted in an R-1 Residential District. The size of the lot upon which the units are located is a non-conforming lot. However, by way of further answer, it is averred that the property of ELEANOR G. GRAFF would not be subject to the terms and provisions of Ordinance 1470 or any modification thereof because the dwellings were located on the lot and the lot was in existence prior to the time of the enactment of Ordinance No. 1470.

26. DENIED as stated. The one (1) family detached dwelling and the two (2) family detached dwelling are not non-conforming uses as multiple-family dwellings are permitted in

an R-1 Residential District. However, by way of further answer, it is averred that the property of ELEANOR G. GRAFF would not be subject to the terms and provisions of Ordinance No. 1470 or any modification thereof because the dwellings were located on said premises and the lot was in existence prior to the time of the enactment of Ordinance No. 1470.

27. DENIED. On the contrary, only Plaintiffs, Jay Faust and Sally Faust, and Plaintiffs, Alfred William Wilson and Sharon Elizabeth Wilson, own homes in the same neighborhood as the premises of Defendant, ELEANOR G. GRAFF. All of the other Plaintiffs' properties are located on other streets or on other blocks that would not be adjacent to or considered to be in the same neighborhood as the Graff premises.

28. DENIED. The two (2) family detached dwelling has not been vacant for a period in excess of four years nor has it ever ceased to be used by ELEANOR G. GRAFF as a two (2) family dwelling. At no time has ELEANOR G. GRAFF abandoned her use of said premises as a two (2) family detached dwelling but, on the contrary, the same remains a two (2) family dwelling to this date.

29. DENIED. The answer set forth in Paragraph 28 is incorporated herein by reference as if fully set forth at length herein.

30. DENIED as stated. The two (2) family detached dwelling of Defendant, ELEANOR G. GRAFF, had a waterline break in the year 2000 but that break was repaired. By further answer, it is averred that Defendant, ELEANOR G. GRAFF, is an elderly person who has had difficulty overseeing her properties because of her physical infirmities. At no time did she intend to abandon the use of the premises as a two (2) family detached dwelling.

31. DENIED as stated. The answer set forth in Paragraph 30 is incorporated herein by reference as if set forth at length herein.

32. DENIED as after reasonable investigation, Defendant, CITY OF DUBOIS, is without sufficient knowledge to attest to the truth or falsity of the averments set forth in Paragraph 32 and strict proof of same is required at trial.

33. DENIED as after reasonable investigation, Defendant, CITY OF DUBOIS, is without sufficient knowledge to attest to the truth or falsity of the averments set forth in Paragraph 33 and strict proof of same is required at trial.

34. DENIED as after reasonable investigation, Defendant, CITY OF DUBOIS, is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraph 34 as the same is within the sole knowledge of the Plaintiffs and strict proof thereof is required at trial. By way of further answer, it is averred that determinations as to the need for repairs is solely within the province of the owner of the premises, ELEANOR G. GRAFF, and her determination of what repairs are needed to the subject premises and can be afforded by her are solely within her right as the owner and are in no way an indication of any intent to abandon the premises.

35. DENIED. The utility meters have not been removed.

36. DENIED. On the contrary, said premises has never ceased to be used as a two (2) family detached dwelling.

37. DENIED as stated. At no time has the subject premises ceased to be used as a two (2) family dwelling.

38. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the two (2) family detached dwelling is a non-conforming use and it is DENIED that said dwelling has been abandoned as a two (2) family detached dwelling.

39. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant, ELEANOR G. GRAFF, has shown a settled purpose to abandon the use of the premises as a two (2) family detached dwelling. Moreover, it is DENIED that the dwelling is a non-conforming use. On the contrary, the use of said dwelling in conjunction with the other house located on the premises is a specifically permitted use in an R-1 District.

40. ADMITTED in part and DENIED in part. While it is ADMITTED that the properties of Defendant, ELEANOR G. GRAFF, are currently listed for sale, Defendant, CITY OF DUBOIS, believes and therefore avers from information it has received in this lawsuit, that the buyer for the premises has declined to consummate the sale due to legal action being brought in the instant case.

41. ADMITTED.

42. ADMITTED.

43. DENIED. No representative authorized to receive such information was ever advised of any such information as set forth in Paragraph 43.

44. DENIED. On the contrary, the CITY OF DUBOIS has an appointed zoning officer.

45. DENIED. At no time has Defendant, CITY OF DUBOIS, ever acknowledged that the two (2) family detached dwelling had been abandoned. On the contrary, the CITY OF



DUBOIS does not consider said property to have been abandoned by Defendant, ELEANOR G. GRAFF. The CITY OF DUBOIS does not consider the property of ELEANOR G. GRAFF to be in violation of any ordinances of the CITY OF DUBOIS and, accordingly, no enforcement proceedings are warranted against Defendant, ELEANOR G. GRAFF.

46. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is averred that there are no issues which would warrant a hearing before the Zoning Hearing Board of the CITY OF DUBOIS.

47. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant, ELEANOR G. GRAFF, has ever indicated any intent to abandon the premises located at 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Pennsylvania.

By way of further answer, it is averred that the premises owned by ELEANOR G. GRAFF was in use as multiple-family dwellings at the time that each and every one of the Plaintiffs moved into their present residence. There has been no change in the use of the premises owned by Defendant, ELEANOR G. GRAFF, which would affect the over-crowding of the land, blight, danger or congestion in travel and transportation. Plaintiffs are estopped from raising any objection to the use of the premises as it was in use at the time that they moved into the neighborhood.

48. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant, ELEANOR G. GRAFF, has indicated actual abandonment of the property located at 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Pennsylvania.

By way of further answer, it is averred that the premises owned by ELEANOR G. GRAFF was in use as multiple-family dwellings at the time that each and every one of the Plaintiffs moved into their present residence. There has been no change in the use of the premises owned by Defendant, ELEANOR G. GRAFF, which would affect the over-crowding of the land, blight, danger or congestion in travel and transportation. Plaintiffs are estopped from raising any objection to the use of the premises as it was in use at the time that they moved into the neighborhood.

49. DENIED. Defendant, ELEANOR G. GRAFF, has not committed any violation of any of the zoning ordinances of the CITY OF DUBOIS. The area surrounding the premises owned by Defendant, ELEANOR G. GRAFF, does not suffer from over-crowding, blight, danger or congestion in travel or transportation and is just like every other older neighborhood in the CITY OF DUBOIS. The premises owned by ELEANOR G. GRAFF was in use as multiple-family dwellings at the time that each and every one of the Plaintiffs moved into their present residence. There has been no change in the use of the premises owned by Defendant, ELEANOR G. GRAFF, which would affect the over-crowding of the land, blight, danger or congestion in travel and transportation. Plaintiffs are estopped from raising any objection to the use of the premises as it was in use at the time that they moved into the neighborhood.

50. DENIED. Defendant, ELEANOR G. GRAFF, has not committed any zoning violation. The premises owned by ELEANOR G. GRAFF was in use as multiple-family dwellings at the time that each and every one of the Plaintiffs moved into their present residence. There has been no change in the use of the premises owned by Defendant, ELEANOR G. GRAFF, which would affect the over-crowding of the land, blight, danger or

congestion in travel and transportation. Plaintiffs are estopped from raising any objection to the use of the premises as it was in use at the time that they moved into the neighborhood.

It is further DENIED that the area surrounding the premise of ELEANOR G. GRAFF suffers from over-crowding of land, blight, danger and congestion in travel and transportation. On the contrary, the area surrounding the lot of ELEANOR G. GRAFF is an older neighborhood and is similar to all other older neighborhoods in the CITY OF DUBOIS and is substantially the same now as it was at the time when Plaintiffs moved into the neighborhood.

51. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the zoning ordinances of Defendant, CITY OF DUBOIS, have any bearing upon the use of the land of ELEANOR G. GRAFF as said premises predated all of the zoning ordinances of the CITY OF DUBOIS. By way of further answer, it is averred that the premises owned by Defendant, ELEANOR G. GRAFF, does not pose a threat of loss of health, life or property nor does said premises cause over-crowding of land, blight or danger and congestion in travel and transportation. By way of further answer, it is averred that the use made by Defendant, ELEANOR G. GRAFF, of her property does not violate any of the ordinances of the CITY OF DUBOIS.

52. (sic 50) DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the zoning ordinances of the CITY OF DUBOIS govern the use of the premises owned by ELEANOR G. GRAFF as said premises were in existence and in use prior to the enactment of the zoning ordinances of the CITY OF DUBOIS.

By way of further answer, it is averred that the use made by Defendant, ELEANOR G. GRAFF, of her property does not violate any of the ordinances of the CITY OF DUBOIS.

WHEREFORE, Defendant, CITY OF DUBOIS, requests your Honorable Court to dismiss Plaintiffs' Complaint with prejudice.

### **NEW MATTER**

53. Defendant, CITY OF DUBOIS, hereby incorporates the answers set forth in Paragraphs 1 through 52 inclusive of the foregoing Answer as if the same were fully set forth herein at length.

54. Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

55. The CITY OF DUBOIS does not consider that the use by Defendant, ELEANOR G. GRAFF, of the premises located at 133, 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, to have been abandoned by ELEANOR G. GRAFF.

56. That the premises located at 133 East Washington Avenue, DuBois, Clearfield County, Pennsylvania, was in existence and in use as a single family dwelling prior to the enactment of all zoning ordinances of the CITY OF DUBOIS.

57. That the premises located at 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, was in existence and in use prior to the enactment of all of the zoning ordinances of the CITY OF DUBOIS.

58. That the 50' x 150' lot upon which the buildings known as 133, 133-1/2 and

135-1/2 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, was in existence and the buildings currently located thereon were so located prior to the enactment of any of the zoning ordinances of the CITY OF DUBOIS.

59. That the buildings and real property located at 133, 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, were in existence and in use at the time that each and every one of the Plaintiffs moved into his respective residence.

60 Plaintiffs are estopped from now complaining that the existence of the properties at 133, 133-1/2 and 135-1/2 East Washington Avenue cause over-crowding of land, blight or danger and congestion in travel and transportation.

61. Plaintiffs' claims are barred by the defense of estoppel.

62. That the CITY OF DUBOIS has made no determination that the use of the premises at 133, 133-1/2 and 135-1/2 East Washington Avenue by the owner of said premises has been abandoned.

63. That the CITY OF DUBOIS is immune from any suit by any individual to attempt to force the CITY OF DUBOIS to make such a determination.

64. Plaintiffs' cause of action is therefore barred by the defense of immunity from suit.

65. Plaintiffs have averred that the premises in question has been abandoned for more than four years.

66. Plaintiffs did not commence their suit until after Defendant, ELEANOR G. GRAFF, had advertised the premises for sale as a single family dwelling and a double family dwelling and had secured a buyer for the premises based on that representation.

67. The delay in filing the Complaint was due entirely to Plaintiffs.

68. Defendants have, by virtue of the aforesaid, been prejudiced by this delay.

69. Plaintiffs are guilty laches.

70. Plaintiffs' cause of action against Defendants is accordingly barred by the defense of laches.

71. The applicable Pennsylvania statute of limitation, 42 Pa. Cons. Stat. Ann. §5522, requires that suit on a cause of action against a government unit be commenced within six (6) months of the date on which the cause of action accrued.

72. Any cause of action Plaintiffs might have had would have accrued on the date which is one (1) year from the time that Plaintiffs maintain the subject premises was abandoned and Plaintiffs' action was not commenced until May 14, 2002, which is beyond the applicable statutory period of limitation.

73. Plaintiffs' action is accordingly barred by the applicable statute of limitation.

74. In the event that Plaintiffs' action is governed by another statute of limitation, Defendant asserts that Plaintiffs' action is also barred by that applicable statute of limitation.

75. That the action of the Plaintiffs seeks to deprive the CITY OF DUBOIS of the revenue it receives from real estate taxes paid on the premises known as 133, 133-1/2 and 135-1/2 East Washington Avenue in the City of DuBois, Clearfield County, Pennsylvania.

76. That the action of the Plaintiffs is void as being against public policy.

WHEREFORE, Defendant, CITY OF DUBOIS, respectfully requests that this Court enter judgment in its favor and against Plaintiffs for all consequential and incidental damages, including reasonable attorney's fees and costs and such other and further relief as this Court deems just and proper.

## COUNTERCLAIM

77. Defendant, CITY OF DUBOIS, Plaintiff in this Counterclaim, hereby incorporates herein by reference the averments contained in Paragraphs 53 through 76 inclusive of the foregoing New Matter as if the same were set forth at length herein.

78. Defendant, CITY OF DUBOIS, has been compelled to retain counsel to defend itself in this action and has engaged Toni M. Cherry at the rate of \$150.00 per hour.

79. The institution of this action by the Plaintiffs against Defendant, CITY OF DUBOIS, is arbitrary, capricious, vexatious and mean-spirited.

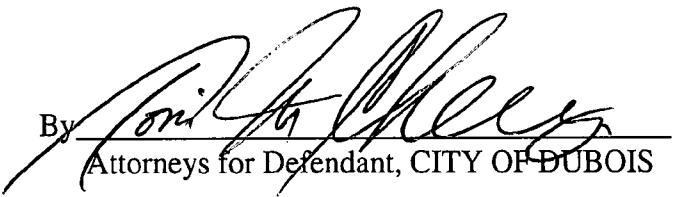
80. Therefore, the CITY OF DUBOIS is entitled to collect counsel fees and Court costs from the Plaintiffs pursuant to 42 Pa. C.S.A. §2503.

WHEREFORE, CITY OF DUBOIS prays your Honorable Court to enter a judgment in its favor and against Plaintiffs for all consequential and incidental damages, including reasonable attorney's fees and costs and such other and further relief as your Honorable Court deems just and proper.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

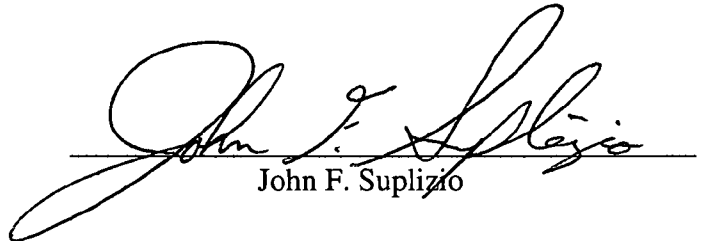
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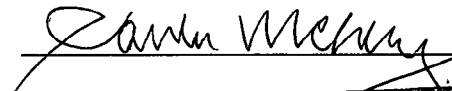
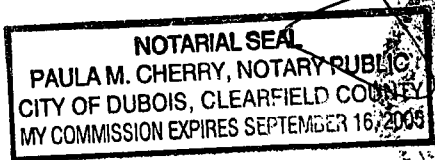
Attorneys for Defendant, CITY OF DUBOIS

COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF CLEARFIELD :

Personally appeared before me, a Notary Public in and for the County and State  
aforesaid, JOHN F. SUPLIZIO, who, being duly sworn according to law, deposes and says that  
he is the Mayor of the CITY OF DUBOIS and as such Mayor is authorized to make this  
Affidavit on behalf of the Defendant, CITY OF DUBOIS, as Mayor and that the facts set forth  
in the foregoing Answer, New Matter and Counterclaim are true and correct to the best of his  
knowledge, information and belief.

  
John F. Suplizio

Sworn to and subscribed before me this 27<sup>th</sup> day of May, 2003.

  
  
NOTARIAL SEAL  
PAULA M. CHERRY, NOTARY PUBLIC  
CITY OF DUBOIS, CLEARFIELD COUNTY  
MY COMMISSION EXPIRES SEPTEMBER 16, 2005



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
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EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs : No. 02 - 760 C.D.

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29<sup>th</sup> day of May, 2003, a true and correct copy of the Answer, New Matter and Counterclaim was served upon the following persons by mailing the same to them by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

Andrew P. Gates, Esq.  
Gates & Seaman  
Attorneys at Law  
P. O. Box 846  
Clearfield, PA 16830

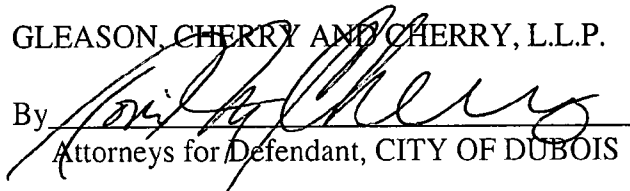
Jeffrey S. DuBois, Esq.  
Hanak, Guido and Taladay  
Attorneys at Law  
P. O. Box 487  
DuBois, PA 15801

Peter F. Smith, Esq.  
Attorney at Law  
P. O. Box 130  
Clearfield, PA 16830

Mr. Robert Curley  
144 East Long Avenue  
DuBois, PA 15801

Mr. and Mrs. Daniel Lee  
206 East Washington Avenue  
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By   
Attorneys for Defendant, CITY OF DUBOIS

Dated: May 29, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY L. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR,  
Plaintiffs

vs.

CITY OF DUBOIS and  
ELEANOR G. GRAFF, her successors  
and/or assigns and all other persons  
claiming any interest in the described  
property,  
Defendants

No. 02-760-CD

Type of Case: Equity

**FILED**

MAY 29 2003

William A. Shaw  
Prothonotary

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendant Eleanor G. Graff, certify that I sent a true and correct copy of **DEFENDANTS GRAFF'S PRELIMINARY OBJECTIONS TO PLAINTIFFS' SECOND SET OF PRELIMINARY OBJECTIONS** by U.S. First Class Mail, Postage Prepaid on May 28, 2003 to the following:

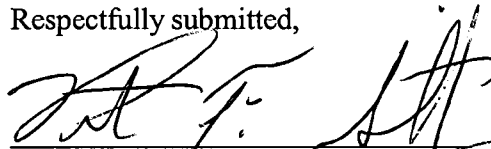
Andrew P. Gates, Esquire  
Attorney for Fitzwaters,  
Ways, Fausts and Farris  
GATES & SEAMAN  
Two North Second Street  
Clearfield, PA 16830

Jeffrey S. DuBois, Esquire  
Attorney for the Wilsons  
HANAK, GUIDO and TALADAY  
498 Jeffers Street  
DuBois, PA 15801

Daniel Lee  
Eva Lee  
206 East Washington Ave.  
DuBois, PA 15801

Toni M. Cherry, Esquire  
Attorney for City of DuBois  
CHERRY & CHERRY  
One North Franklin Street  
DuBois, PA 15801

Respectfully submitted,



Peter F. Smith,  
Attorney for Eleanor G. Graff

Date: May 28, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
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EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR  
Plaintiffs

vs.

CITY OF DUBOIS and  
ELEANOR G. GRAFF, her successors  
and/or assigns and all other persons  
claiming any interest in the described  
property,  
Defendants

No. 02-760-CD

Type of Case: **Equity**

Type of Pleading:  
**Defendant Graff's Preliminary Objections  
to Plaintiffs' Second Set of Preliminary  
Objections**

Filed on Behalf of:  
**Eleanor G. Graff**

Counsel of Record for this Party:  
**Peter F. Smith**  
Supreme Court ID #34291  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

FILED

MAY 2 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: <b>Equity</b>
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

**DEFENDANT GRAFF'S PRELIMINARY OBJECTIONS TO PLAINTIFFS' SECOND  
SET OF PRELIMINARY OBJECTIONS**

COMES NOW, Defendant Eleanor G. Graff, by her attorney Peter F. Smith, who files the following Preliminary Objections to the second set of Preliminary Objections submitted by the Plaintiffs':

1. Plaintiffs' filed their first set of Preliminary Objections on April 14, 2003.
2. The firm of Gates and Seaman subsequently entered its appearance for some of the Plaintiffs and by letter advised the Court that the first Preliminary Objections were rendered moot by an Amended Answer, New Matter and Counterclaim filed by Defendant Eleanor G. Graff.
3. The objections identified by Headings I and VI are barred by Pa.R.C.P. 1028(b) because they could and should have been raised as part of Plaintiffs' First Preliminary Objections.
4. Plaintiffs' other Preliminary Objections are without merit and should be denied for failure to conform to Pennsylvania law. The Amended Answer, New Matter and Counterclaim

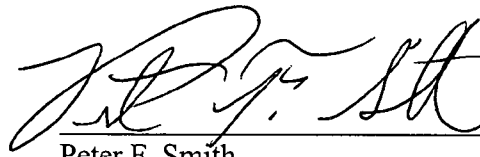
sufficiently apprise the Plaintiffs of the operative facts and legal principals upon which the Defendant Eleanor G. Graff bases her defense and counterclaim.

5. The additional information sought by Plaintiffs is more properly the subject for discovery.

6. Defendant Eleanor G. Graff's averments in the Answer, New Matter and Counterclaim are sufficient to frame the issues to this case of this case of resolution at trial.

Respectfully submitted,

Date: 5/28/03

A handwritten signature in black ink, appearing to read "P.F. Smith", written over a horizontal line.

Peter F. Smith,  
Attorney for Eleanor G. Graff

CA


IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, al	:
	:
vs.	: No. 02-760-CD
	:
CITY OF DUBOIS, al	:

**ORDER**

AND NOW, this 30 day of May, 2003, it is the ORDER of the Court that Hearing on Plaintiffs' Preliminary Objections to Answer, New Matter and Counterclaim filed by Attorney Gates and Defendant's Preliminary Objections to Plaintiffs' Second Set of Preliminary Objections filed by Attorney Smith in the above matter has been scheduled for **Thursday, June 19, 2003 at 11:00 A.M.** in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA. One (1) hour has been allotted for these matters.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
Judge

**FILED**

MAY 30 2003

William A. Shaw  
Prothonotary

FILED

NO 01 2:02 PM  
MAY 30 2003

William A. Shaw  
Prothonotary

1 CC to Atty's Gates, T. Cherry, P. Smith, Dubois  
1 CC Daniel & Eva Lee  
1 CC R. Curley  
(see list for addresses)

02-760-CD Fitzwater vs. DuBois etal

Andrew P. Gates, Esq.  
PO Box 846  
2 North Front Street  
Clearfield, PA 16830

Daniel Lee  
Eva Lee  
206 E. Washington Ave.  
DuBois, PA 15801

Robert Curley  
144 E. Long Ave.  
DuBois, PA 15801

Toni M. Cherry  
Gleason, Cherry & Cherry  
PO Box 505  
1 North Franklin St.  
DuBois, PA 15801

Peter F. Smith, Esq.  
PO Box 130  
Clearfield, PA 16830

Jeffrey S. DuBois  
Hanak, Guido, and Taladay  
498 Jeffers St.  
PO Box 487  
DuBois, PA 15801



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY L. :  
WAY, DANIEL LEE, EVA LEE, :  
ALFRED WILLIAM WILSON, SHARON :  
ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR, and :  
CATHERINE E. FARR, :  
Plaintiffs :

vs. :

CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest :  
in the described property, :  
Defendant :

No. 02- 760 -CD

Type of Case: EQUITY

Type of Pleading: Plaintiffs,  
Alfred William Wilson and  
Sharon Elizabeth Wilson,  
Preliminary Objections to  
Defendant, Eleanor G. Graff's  
Amended Answer, New Matter and  
Counterclaim

Filed on behalf of: Plaintiffs  
Alfred William Wilson and  
Sharon Elizabeth Wilson

Counsel of Record for this  
Party:  
Andrew P. Gates, Esquire

Supreme Court No.: 36604

GATES & SEAMAN  
Attorneys at law  
Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

**FILED**

JUN 09 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A.	:	
FITZWATER, JAY FAUST, SALLY FAUST,	:	
LAWRENCE M. WAY, AMY L. WAY, DANIEL:	:	
LEE, EVA LEE, ALFRED WILLIAM WILSON:	:	
SHARON ELIZABETH WILSON, ROBERT	:	
CURLEY, JOHN E. FARR and CATHERINE	:	
E. FARR,	:	
	:	
Plaintiffs	:	No. 02-760-CD
	:	
-vs-	:	In Equity
	:	
CITY OF DUBOIS and ELEANOR G.	:	
GRAFF, her successors and/or	:	
assigns claiming any interest in	:	
the described property,	:	
Defendant	:	

**PLAINTIFFS, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON'S**  
**PRELIMINARY OBJECTIONS TO ANSWER, NEW MATTER**  
**AND COUNTERCLAIM AMENDED PURSUANT TO PA.R.C.P. 1028(c)(1)**  
**OF DEFENDANT, ELEANOR G. GRAFF**

Plaintiffs, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, by and through their attorneys, Gates and Seaman, preliminarily object to the Amended Answer, New Matter and Counterclaim of Defendant, ELEANOR G. GRAFF, as follows:

I. **PRELIMINARY OBJECTIONS RAISING**  
**FAILURE TO CONFORM TO 42 PA.R.C.P. NO. 1510(a)**

Plaintiffs, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, pursuant to Pa. R.C.P. § 1019(g), hereby incorporate by reference as though set forth at length herein, Paragraphs 1 through 7 and the prayer of Plaintiffs, Timothy J. Fitzwater et al Preliminary Objections to Defendant, Eleanor G. Graff's Amended Answer, New Matter and Counterclaim.

**II. PRELIMINARY OBJECTIONS RAISING LEGAL  
INSUFFICIENCY OF PLEADING UNDER PA. R.C.P. §1028(a)(4)**

Plaintiffs, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, pursuant to Pa. R.C.P. § 1019(g), hereby incorporate by reference as though set forth at length herein, Paragraphs 8 through 13 and the prayer of Plaintiffs, Timothy J. Fitzwater et al Preliminary Objections to Defendant, Eleanor G. Graff's Amended Answer, New Matter and Counterclaim.

**III. PRELIMINARY OBJECTIONS RAISING  
FAILURE TO CONFORM TO PA. R.C.P. §1028(a)(3)**

Plaintiffs, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, pursuant to Pa. R.C.P. § 1019(g), hereby incorporate by reference as though set forth at length herein, Paragraphs 14 through 17 and the prayer of Plaintiffs, Timothy J. Fitzwater et al Preliminary Objections to Defendant, Eleanor G. Graff's Amended Answer, New Matter and Counterclaim.

**IV. PRELIMINARY OBJECTIONS RAISING FAILURE TO  
CONFORM TO PA. R.C.P. NO. 1028(a)(2) and (4)**

Plaintiffs, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, pursuant to Pa. R.C.P. § 1019(g), hereby incorporate by reference as though set forth at length herein, Paragraphs 18 through 23 and the prayer of Plaintiffs, Timothy J. Fitzwater et al Preliminary Objections to Defendant, Eleanor G. Graff's Amended Answer, New Matter and Counterclaim.

V. PRELIMINARY OBJECTIONS RAISING FAILURE  
TO CONFORM TO 42 PA. R.C.P. NO. 1028(a)(3)

Plaintiffs, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, pursuant to Pa. R.C.P. § 1019(g), hereby incorporate by reference as though set forth at length herein, Paragraphs 24 through 28 and the prayer of Plaintiffs, Timothy J. Fitzwater et al Preliminary Objections to Defendant, Eleanor G. Graff's Amended Answer, New Matter and Counterclaim.

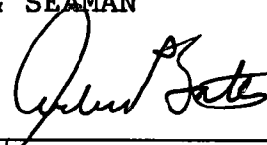
VI. PRELIMINARY OBJECTIONS RAISING FAILURE  
TO CONFORM TO 42 PA. R.C.P. NO. 1028(a)(2)

Plaintiffs, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, pursuant to Pa. R.C.P. § 1019(g), hereby incorporate by reference as though set forth at length herein, Paragraphs 29 through 32 and the prayer of Plaintiffs, Timothy J. Fitzwater et al Preliminary Objections to Defendant, Eleanor G. Graff's Amended Answer, New Matter and Counterclaim.

Respectfully submitted,

GATES & SEAMAN

By:



---

Andrew P. Gates, Esquire  
Attorney for Plaintiffs,  
Alfred William Wilson and  
Sharon Elizabeth Wilson

Date: June 9, 2003

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PA  
No. 02-760-CD  
IN EQUITY

TIMOTHY J. FITZWATER, LISA A.  
FITZWATER, JAY FAUST, SALLY FAUST,  
LAWRENCE M. WAY, AMY L. WAY,  
DANIEL LEE, EVA LEE, ALFRED  
WILLIAM WILSON, SHARON ELIZABETH  
WILSON, ROBERT CURLEY, JOHN E. FARR  
and CATHERINE E. FARR, Plaintiffs

-VS-  
CITY OF DUBOIS and ELEANOR G. GRAFF,  
her successors and/or assigns  
claiming any interest in the  
described property, Defendants

Plaintiffs, Alfred William Wilson  
and Sharon Elizabeth Wilson,  
Preliminary Objections to  
Defendant, Eleanor G. Graff's  
Amended Answer, New Matter and  
Counterclaim

FILED

06334-01  
JUN 09 2003

William A. Shaw  
Prothonotary

LAW OFFICES  
GATES & SEAMAN  
2 NORTH FRONT STREET  
P.O. BOX 846  
CLEARFIELD, PA. 16830

1/02  
Amy Gates  
6/2003

CH

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION-LAW

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY L. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM  
WILSON, SHARON ELIZABETH  
WILSON, ROBERT CURLEY,  
JOHN E. FARR, and CATHERINE  
E. FARR,

Plaintiffs

vs.

CITY OF DUBOIS and ELEANOR  
G. GRAFF, her successors  
and/or assigns and all other  
persons claiming any interest  
in the described property,  
Defendants

No. 02-760-CD

Type of Pleading:

**PRAECIPE FOR WITHDRAWAL  
OF APPEARANCE AND ENTRY  
OF APPEARANCE**

Filed on Behalf of:  
ALFRED WILLIAM WILSON and  
SHARON ELIZABETH WILSON

Counsel of Record for this Party:

Jeffrey S. DuBois  
Supreme Court No. 62074  
Hanak, Guido and Taladay  
498 Jeffers Street  
PO Box 487  
DuBois, PA 15801

814-371-7768

**FILED**

JUN 09 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION

TIMOTHY J. FITZWATER, et al.	:	
Plaintiff	:	
vs.	:	No. 02-760- CD
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her	:	
successors and/or assigns and all	:	
other persons claiming any	:	
interest in the described	:	
property,	:	
Defendants	:	

**PRAECIPE FOR WITHDRAWAL OF APPEARANCE**

TO THE PROTHONOTARY:

Please withdraw my appearance on behalf of ALFRED WILLIAM  
WILSON and SHARON ELIZABETH WILSON, Plaintiffs, in the above  
captioned matter.

Hanak, Guido and Taladay, by:



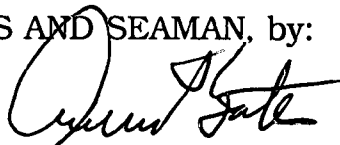
---

Jeffrey S. DuBois, Esq.

**PRAECIPE FOR ENTRY OF APPEARANCE**

Please enter my appearance on behalf of ALFRED WILLIAM  
WILSON and SHARON ELIZABETH WILSON, Plaintiffs, in the above  
captioned matter.

GATES AND SEAMAN, by:



---

Andrew P. Gates, Esq.

FILED

30C

0131 35-871

JUN 09 2003

Atty Gates



William A. Shaw  
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. FITZWATER, :  
JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, EVA LEE, ALFRED :  
WILLIAM WILSON SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :

Plaintiffs

No. 02-760-CD

-vs-

In Equity

CITY OF DUBOIS and ELEANOR G. GRAFF, her :  
successors and/or assigns claiming any interest in :  
the described property, :

Defendant

**FILED**

**AFFIDAVIT OF SERVICE**

COMMONWEALTH OF PENNSYLVANIA :

:SS.

COUNTY OF CLEARFIELD :

JUN 10 2003

01 3:50/4

William A. Shaw  
Prothonotary

no cert. 824

ANDREW P. GATES, ESQUIRE, of Gates & Seaman, being duly sworn according to law, states that he, on June 9, 2003, mailed, by regular U. S. Mail, postage prepaid, a true and correct copy of (a) Praecipe for Withdrawal of Appearance of Jeffrey S. DuBois, Esquire and Entry of Appearance of Andrew P. Gates, Esquire on behalf of Plaintiffs, Alfred William Wilson and Sharon Elizabeth Wilson; and (b) Plaintiffs Alfred William Wilson and Sharon Elizabeth Wilson Preliminary Objections to Defendant Eleanor G. Graff's Amended Answer, New Matter and Counterclaim as follows:

Toni M. Cherry, Esquire  
GLEASON, CHERRY & CHERRY, LLP  
P. O. Box 505  
DuBois, PA 15801

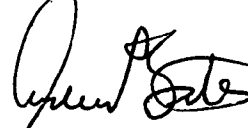
Peter F. Smith, Esquire  
P. O. Box 130  
Clearfield, PA 16830

Mr. and Mrs. Daniel Lee  
206 East Washington Avenue  
DuBois, PA 15801

Mr. Robert Curley  
155 Schonwalder Road  
Clearfield, PA 16830

GATES & SEAMAN

By:



Andrew P. Gates, Esquire

Sworn to and subscribed before me  
this 10 day of June, 2003.

Rose M. Raymond

NOTARIAL SEAL  
ROSE M. RAYMOND, Notary Public  
Clearfield Boro, Clearfield County  
My Commission Expires Oct. 28, 2005

# FILED

JUN 16 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

William A. Shaw  
Prothonotary

TIMOTHY J. FITZWATER, LISA A. FITZWATER,  
JAY FAUST, SALLY FAUST, LAWRENCE M. WAY,  
AMY L. WAY, DANIEL LEE, EVA LEE, ALFRED  
WILLIAM WILSON SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR,

Plaintiffs

-vs-

CITY OF DUBOIS and ELEANOR G. GRAFF, her  
successors and/or assigns claiming any  
interest in the described property,  
Defendant

No. 02-760-CD

In Equity

## AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

:  
:SS.  
:

ANDREW P. GATES, ESQUIRE, of Gates & Seaman, being duly sworn according to law, states that he, on June 11, 2003, mailed, by regular U. S. Mail, postage prepaid, a certified copy of Plaintiffs' Preliminary Objections to Defendant City of DuBois's Answer, New Matter and Counterclaim as follows:

Toni M. Cherry, Esquire  
P. O. Box 505  
DuBois, PA 15801

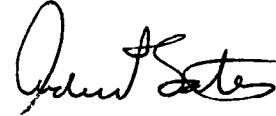
Peter F. Smith, Esquire  
P. O. Box 130  
Clearfield, PA 16830

Mr. and Mrs. Daniel Lee  
206 East Washington Avenue  
DuBois, PA 15801

Robert Curley  
155 Schonwalder Road  
Clearfield, PA 16830

GATES & SEAMAN

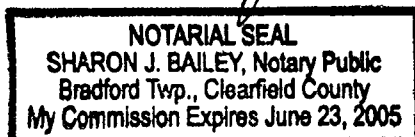
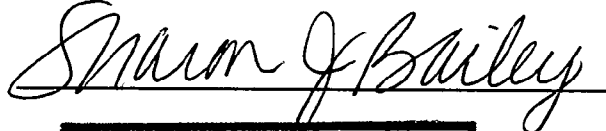
By:



Andrew P. Gates, Esquire

Sworn to and subscribed before me

this 12th day of June, 2003.



CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, al

vs.

CITY OF DUBOIS, al

:  
:  
: No. 02-760-CD  
:  
:

**ORDER**

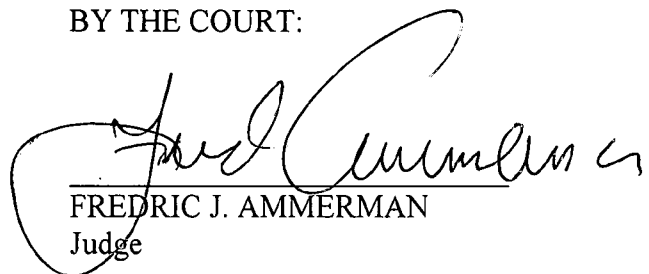
AND NOW, this 16 day of June, 2003, it is the ORDER of the Court that Hearing on Plaintiffs Preliminary Objections filed by Attorney Gates on June 9, 2003 and Plaintiffs Preliminary Objections filed by Attorney Gates on June 11, 2003 will be included with the Hearing on Plaintiffs' Preliminary Objections filed by Attorney Gates on May 16, 2003 and Defendant's Preliminary Objections filed by Attorney Smith on May 29, 2003 currently scheduled for **Thursday, June 19, 2003 at 11:00 A.M.** in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA. One (1) hour has been allotted for these matters.

BY THE COURT:

**FILED**

JUN 16 2003

William A. Shaw  
Prothonotary

  
FREDRIC J. AMMERMAN  
Judge

**FILED**

9/2:40 8th  
JUN 16 2003

William A. Shaw  
Prothonotary

1cc to each

party-see attached list

*WAS*

02-760-CD Fitzwater vs. DuBois etal

Andrew P. Gates, Esq.  
PO Box 846  
2 North Front Street  
Clearfield, PA 16830

Daniel Lee  
Eva Lee  
206 E. Washington Ave.  
DuBois, PA 15801

Robert Curley  
144 E. Long Ave.  
DuBois, PA 15801

Toni M. Cherry  
Gleason, Cherry & Cherry  
PO Box 505  
1 North Franklin St.  
DuBois, PA 15801

Peter F. Smith, Esq.  
PO Box 130  
Clearfield, PA 16830

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

JUN 17 2003

TIMOTHY J. FITZWATER, LISA A. FITZWATER, :  
JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, EVA LEE, ALFRED :  
WILLIAM WILSON, SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :

Plaintiffs :

-vs-

CITY OF DUBOIS and ELEANOR G.  
GRAFF, her successors and/or  
assigns and all other persons  
claiming any interest in the  
described property,

Defendants :

No. 02-760-CD

In Equity

William A. Shaw  
Prothonotary

NOTICE OF SERVICE OF PLAINTIFFS' INTERROGATORIES  
DIRECTED TO DEFENDANT, ELEANOR G. GRAFF

Take notice that on the 17<sup>th</sup> day of June, 2003, the undersigned  
attorney, served Interrogatories of Plaintiffs, Timothy J. Fitzwater, Lisa  
A. Fitzwater, Jay Faust, Sally Faust, Lawrence M. Way, Amy L. Way, John E.  
Farr, Catherine E. Farr, Alfred William Wilson and Sharon Elizabeth Wilson  
Directed to Defendant, Eleanor G. Graff, by regular U. S. first class mail,  
postage prepaid, upon the following:

Peter F. Smith, Esquire  
Attorney for Defendant, Eleanor G. Graff  
P. O. Box 130  
Clearfield, PA 16830

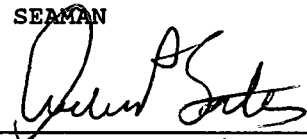
Toni M. Cherry, Esquire  
GLEASON, CHERRY & CHERRY  
P. O. Box 505  
DuBois, PA 15801

Mr. and Mrs. Daniel Lee  
206 East Washington Avenue  
DuBois, PA 15801

Mr. Robert Curley  
155 Schonwalder Road  
Clearfield, PA 16830

GATES & SEAMAN

By:



Andrew P. Gates, Esquire  
Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

Attorney for Plaintiffs,  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally Faust,  
Lawrence M. Way, Amy L. Way, John  
E. Farr, Catherine E. Farr, Alfred  
William Wilson, and Sharon  
Elizabeth Wilson

Date:

June 17, 2003

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

FILED

JUN 17 2003

TIMOTHY J. FITZWATER, LISA A.  
FITZWATER, JAY FAUST, SALLY FAUST,  
LAWRENCE M. WAY, AMY L. WAY, DANIEL  
LEE, EVA LEE, ALFRED WILLIAM WILSON  
SHARON ELIZABETH WILSON, ROBERT  
CURLEY, JOHN E. FARR and CATHERINE  
E. FARR,

Plaintiffs

-vs-

CITY OF DUBOIS and ELEANOR G.  
GRAFF, her successors and/or  
assigns and all other persons  
claiming any interest in the  
described property,

Defendants

William A. Shaw  
Prothonotary  
No. 02-760-CD

In Equity

NOTICE OF SERVICE OF PLAINTIFFS' REQUEST FOR PRODUCTION OF  
DOCUMENTS DIRECTED TO DEFENDANT, ELEANOR G. GRAFF

Take notice that on the 17<sup>th</sup> day of June, 2003, the undersigned  
attorney, served Request for Production of Documents of Plaintiffs, Timothy J.  
Fitzwater, Lisa A. Fitzwater, Jay Faust, Sally Faust, Lawrence M. Way, Amy L.  
Way, John E. Farr, Catherine E. Farr, Alfred William Wilson and Sharon  
Elizabeth Wilson Directed to Defendant, Eleanor G. Graff, by regular U. S.  
first class mail, postage prepaid, upon the following:

Peter F. Smith, Esquire  
P. O. Box 130  
Clearfield, PA 16830

Toni M. Cherry, Esquire  
GLEASON, CHERRY & CHERRY  
P. O. Box 505  
DuBois, PA 15801

Mr. and Mrs. Daniel Lee  
206 East Washington Avenue  
DuBois, Pennsylvania 15801

Mr. Robert Curley  
155 Schonwalder Road  
Clearfield, PA 16830

GATES & SEAMAN  
By:

Andrew P. Gates, Esquire  
Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

Attorney for Plaintiffs,  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally Faust,  
Lawrence M. Way, Amy L. Way, John  
E. Farr, Catherine E. Farr, Alfred  
William Wilson, and Sharon  
Elizabeth Wilson

Date:

June 17, 2003

**FILED** *mc*  
01315 *eth*  
JUN 17 2003 *eth*

William A. Shaw  
Prethotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

FILED

JUN 17 2003

William A. Shaw  
Prothonotary

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL :  
LEE, EVA LEE, ALFRED WILLIAM WILSON :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :

Plaintiffs

No. 02-760-CD

-vs-

In Equity

CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns and all other persons :  
claiming any interest in the :  
described property, :


Defendants

NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE  
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

Plaintiffs, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, JOHN E. FARR, CATHERINE E. FARR, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, through and by their Attorney, Andrew P. Gates, Esquire, intend to serve Subpoenas identical to the ones that are attached to this Notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an Objection to the Subpoenas. If no objection is made, the Subpoenas may be served.

Date:

June 17, 2003

  
Andrew P. Gates, Esquire

LAW OFFICES OF GATES & SEAMAN  
2 North Front Street  
P. O. Box 846  
Clearfield, Pennsylvania 16830  
(814) 765-1766

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL: :  
LEE, EVA LEE, ALFRED WILLIAM WILSON: :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :  
Plaintiffs : No. 02-760-CD  
-vs- : In Equity  
CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns and all other persons :  
claiming any interest in the :  
described property, :  
Defendants :

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY  
PURSUANT TO RULE 4009.22

TO: MEDRED REALTY ASSOCIATES  
R. R. #8, Box 22  
DuBois, PA 15801

Within twenty (20) days after service of this Subpoena, you are ordered by the Court to produce the following documents or things:

(a) complete copy of your entire office file and any other records pertaining to the real estate of Eleanor G. Graff, situate at 133, 133 ½ and 135 ½ East Washington Avenue, DuBois, Pennsylvania 15801. The documents to be produced (including all pages and attachments) shall include but not be limited to: all listing agreements, sales agreements, brokerage agreements, real estate appraisals performed on subject property, memorandums, notes from discussions with Eleanor G. Graff, her agents and/or attorneys-in-fact, correspondence to and from Eleanor G. Graff, her agents, attorneys-in-fact, and/or legal representatives, notes from inspection appearances and showings, photographs of premises, videos of premises, mortgage applications of any prospective buyers, responses from lenders to mortgage applications of prospective buyers, disclosure statements of

seller, her agents, attorneys-in-fact and/or legal representative, copies of power of attorneys or court order pertaining to Eleanor G. Graff and other written material in your possession pertaining to said real estate. Said documents to be produced or are to be provided to Andrew P. Gates, Esquire, 2 North Front Street, P. O. Box 846, Clearfield, Pennsylvania 16830.

You may deliver or mail legible copies of the documents or produce things requested by this Subpoena, together with the Certificate of Compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this Subpoena within twenty (20) days after its service, the party serving the Subpoena may seek a Court Order compelling you to comply with it.

This Subpoena was issued at the request of the following person: Andrew P. Gates, Esquire, Pennsylvania Bar Identification Number: 36604, Address: 2 North Front Street, P. O. Box 846, Clearfield, Pennsylvania 16830; telephone number (814) 765-1766, Attorney for Plaintiffs/Petitioners, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, JOHN E. FARR, CATHERINE E. FARR, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON.

BY THE COURT:

Date: \_\_\_\_\_

\_\_\_\_\_  
Prothonotary

(SEAL)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL :  
LEE, EVA LEE, ALFRED WILLIAM WILSON :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
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Plaintiffs : No. 02-760-CD  
-vs- : In Equity  
CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns and all other persons :  
claiming any interest in the :  
described property, :  
Defendants :

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY  
PURSUANT TO RULE 4009.22

TO: STEMMERICH REALTY  
150 West DuBois Avenue  
DuBois, PA 15801

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seller, her agents, attorneys-in-fact and/or legal representative, copies of power of attorneys or court order pertaining to Eleanor G. Graff and other written material in your possession pertaining to said real estate. Said documents to be produced or are to be provided to Andrew P. Gates, Esquire, 2 North Front Street, P. O. Box 846, Clearfield, Pennsylvania 16830.

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BY THE COURT:

Date: \_\_\_\_\_

\_\_\_\_\_  
Prothonotary

(SEAL)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL: :  
LEE, EVA LEE, ALFRED WILLIAM WILSON: :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :  
Plaintiffs : No. 02-760-CD  
-vs- : In Equity  
CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns and all other persons :  
claiming any interest in the :  
described property, :  
Defendants :

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY  
PURSUANT TO RULE 4009.22

TO: DENNIS P. KENNELLY  
R. R. #1, Box 40-C  
Reynoldsville, PA 15851

Within twenty (20) days after service of this Subpoena, you are ordered by the Court to produce the following documents or things:

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seller, her agents, attorneys-in-fact and/or legal representative, copies of power of attorneys or court order pertaining to Eleanor G. Graff and other written material in your possession pertaining to said real estate. Said documents to be produced or are to be provided to Andrew P. Gates, Esquire, 2 North Front Street, P. O. Box 846, Clearfield, Pennsylvania 16830.

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This Subpoena was issued at the request of the following person: Andrew P. Gates, Esquire, Pennsylvania Bar Identification Number: 36604, Address: 2 North Front Street, P. O. Box 846, Clearfield, Pennsylvania 16830; telephone number (814) 765-1766, Attorney for Plaintiffs/Petitioners, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, JOHN E. FARR, CATHERINE E. FARR, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON.

BY THE COURT:

Date: \_\_\_\_\_

\_\_\_\_\_  
Prothonotary

(SEAL)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, et al :  
VS. : NO. 02-760-CD  
CITY of DUBOIS, et al :

O R D E R

NOW, this 19th day of June, 2003, following argument on the Preliminary Objections as the record will reflect, it is the ORDER of this Court that counsel for Plaintiff have no more than ten (10) days from this date in which to submit appropriate brief to the Court. Counsel for the Defendants shall have no more than ten (10) days thereafter to submit the same.

BY THE COURT,

  
Judge

**FILED**

JUN 24 2003  
0/9:00/10  
William A. Shaw  
Prothonotary  
CMT TO GATEJ  
SMH  
T. CHEN



IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
No. 02-760-CD  
IN EQUITY

TIMOTHY J. FITZWATER, et al  
-VS-  
CITY OF DUBOIS, et al

NAMED PLAINTIFFS'  
PRELIMINARY OBJECTIONS TO  
ANSWER, NEW MATTER AND  
COUNTERCLAIM OF DEFENDANT,  
CITY OF DUBOIS

FILED 5:00  
JUN 11 2003  
William A. Shew  
Clerk

LAW OFFICES  
GATES & SEAMAN  
2 NORTH FRONT STREET  
P.O. BOX 846  
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY L. :  
WAY, DANIEL LEE, EVA LEE, :  
ALFRED WILLIAM WILSON, SHARON :  
ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR, and :  
CATHERINE E. FARR, :  
Plaintiffs :

vs. :

CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest :  
in the described property, :  
Defendant :

No. 02- 760 -CD

Type of Case: EQUITY

Type of Pleading: Plaintiffs,  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy L.  
Way, Alfred William Wilson,  
Sharon Elizabeth Wilson, John  
E. Farr, and Catherine E.  
Farr, Preliminary  
Objections to Answer, New  
Matter and Counterclaim of  
Defendant, City of DuBois

Filed on behalf of: Plaintiffs  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy  
L. Way, Alfred William Wilson,  
Sharon Elizabeth Wilson, John  
E. Farr and Catherine E. Farr

Counsel of Record for this  
Party:  
Andrew P. Gates, Esquire

Supreme Court No.: 36604

GATES & SEAMAN  
Attorneys at law  
Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

**FILED**

JUN 11 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL :  
LEE, EVA LEE, ALFRED WILLIAM WILSON :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :  
Plaintiffs : No. 02-760-CD  
-vs- : In Equity  
CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest in :  
the described property, :  
Defendant :

PLAINTIFFS, TIMOTHY J. FITZWATER, LISA A. FITZWATER,  
JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY,  
ALFRED WILLIAM WILSON, SHARON ELIZABETH WILSON,  
JOHN E. FARR, AND CATHERINE E. FARR,  
PRELIMINARY OBJECTIONS TO ANSWER, NEW MATTER AND  
COUNTERCLAIM OF DEFENDANT, CITY OF DUBOIS

The aforementioned Plaintiffs, by and through their attorneys, Gates and Seaman, preliminarily object to the Answer, New Matter and Counterclaim of Defendant, City of DuBois, as follows:

I. PRELIMINARY OBJECTIONS RAISING FAILURE TO CONFORM TO 42 Pa.R.C.P. No. 1096

1. Paragraphs 78 through 80 of Defendant, City of DuBois's Counterclaim seeks counsel fees and court costs pursuant to 42 Pa.C.S.A. §2503.
2. Plaintiff's Complaint seeks mandamus relief versus Defendant, City of DuBois.
3. Pa.R.C.P. §1096 specifically provides that in mandamus actions "no counterclaim may be asserted".
4. Under Pa.R.C.P. §1028(a)(2), a party may

preliminary object should another party's pleading fail to conform to law or rule of court, in this case, Pa.R.C.P. §1096.

WHEREFORE, the aforementioned Plaintiffs respectfully request that this Court sustain Plaintiffs' Preliminary Objection and strike Defendant, City of DuBois's Counterclaim seeking counsel fees and costs under 42 Pa.C.S.A. §2503.

**II. PRELIMINARY OBJECTIONS RAISING FAILURE TO CONFORM TO 42 Pa. R.C.P. No. 1510(a)**

5. The Counterclaim of Defendant, City of DuBois, in Paragraphs 78 through 80 thereof states "The institution of this action by Plaintiffs against Defendant, City of DuBois, is arbitrary, capricious, vexatious and mean spirited" and seeks counsel fees and Court costs pursuant to 42 Pa. C.S.A. §2503.

6. Pa. R.C.P. 1510(a) requires that a Defendant may plead as a counterclaim only a cause of action, whether equitable or legal, which arises from the same transaction or occurrence, or series of transactions or occurrences, from which the Plaintiffs' cause of action arose.

7. Said Defendant's Counterclaim as asserted in Paragraphs 78 through 80 thereof bears no direct relationship to the issues raised in Plaintiffs' Complaint and is otherwise collateral to Plaintiffs' cause of action.

8. Said Defendant's Counterclaim asserted in Paragraphs 78 through 80 thereof is based on the mere fact that Plaintiffs instituted the present proceedings against the Defendants, as they are authorized to do under 53 P.S. §10617,

since Defendant Graff has sought to maintain, use and sell the real estate in question in contravention to the City of DuBois Zoning Ordinance and the City of DuBois has taken no action to enforce said Ordinance.

9. Claims for counsel fees and costs under 42 Pa.C.S.A. §2503 may only be imposed "as part of the taxable costs", at the conclusion of the underlying matter.

10. Under Pa. R.C.P. 1028(a)(4), a party may preliminarily object by way of demurrer because of a legal insufficiency of a pleading.

11. Under Pa. R.C.P. 1028(a)(2), a party may preliminarily object should another parties' pleading fail to conform to law or rule of Court, in this case, Pa. R.C.P. §1510(a).

WHEREFORE, Plaintiffs respectfully request that this Court sustain Plaintiffs' Preliminary Objections and strike the City of DuBois's Counterclaim seeking counsel fees and Court costs under 42 Pa. C.S.A. §2503.

**III. PRELIMINARY OBJECTIONS RAISING FAILURE TO CONFORM TO 42 Pa. R.C.P. §1028(a)(2)**

12. Paragraph 79 of Defendant, City of DuBois's Counterclaim sets forth that the institution of this action by Plaintiffs is arbitrary, capricious, vexatious and mean spirited.

13. The allegations in Paragraph 79 in said Defendant's Counterclaim does nothing more than attempt to impugn Plaintiffs' character, honesty and motive in bringing this action.

14. The allegations set forth in Paragraph 79 of said Defendant's Counterclaim are scandalous, impertinent, irrelevant, immaterial and inappropriate to the cause of action asserted by Plaintiffs' and are in violation of the pleading requirements of Pa. R.C.P. §1019(a).

WHEREFORE, the aforementioned Plaintiffs respectfully request that this Court sustain this Preliminary Objection and strike Paragraph 79 of Defendant, City of DuBois's Counterclaim.

IV. PRELIMINARY OBJECTIONS TO THOSE PORTIONS OF DEFENDANT, CITY OF DUBOIS'S NEW MATTER STATING PLAINTIFFS' COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED DUE TO THE LEGAL INSUFFICIENCY AND LACK OF SUPPORTING ALLEGATIONS UNDER Pa. R.C.P. §1028(a)(4).

15. Paragraph 54 of Defendant, City of DuBois's New Matter sets forth that "Plaintiffs' Complaint fails to state a claim upon which relief may be granted".

16. The allegations set forth in Paragraph 54 of said Defendant's New Matter are essentially challenging the legal sufficiency of Plaintiffs' Complaint.

17. Defendant, City of DuBois, previously, in its Preliminary Objections, claimed that "Plaintiffs have no cause of action against the City of DuBois to compel it to enforce its ordinances.".

18. Following argument and consideration of briefs, filed by Plaintiffs', pro se, and Defendant, City of DuBois, this Honorable Court dismissed said Defendant's Preliminary Objections by Order dated February 14, 2003.

19. Plaintiffs' Complaint alleges sufficient facts showing that they have a beneficial interest distinct from that of the general public.

20. Plaintiffs' Complaint alleges sufficient facts so as to be in compliance with the requirements set forth in Pa. R.C.P. §1095.

21. Plaintiffs' Complaint contains a prayer requesting that the City of DuBois be ordered to immediately initiate enforcement proceedings pursuant to 53 P.S. §10616.1 and DuBois Ordinance No. 1470, §704 against property owner, Defendant, Eleanor G. Graff.

22. Plaintiffs have a viable cause of action versus Defendant, City of DuBois, to compel said Defendant to perform a public act and/or duty which said Defendant undertook by enacting Ordinance No. 1470.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court sustain Plaintiffs' Preliminary Objections and strike Paragraph 54 of said Defendant's New Matter.

**V. PRELIMINARY OBJECTIONS RAISING LEGAL INSUFFICIENCY OF A PORTION OF DEFENDANT'S NEW MATTER UNDER Pa. R.C.P. § 1028(a)(4)**

23. Paragraph 76 of Defendant, City of DuBois's New Matter claims that "the action of Plaintiffs is void as being against public policy".

24. The claimed defense that an action is void as being against public policy is not a listed affirmative defense under Pa. R.C.P. §1030(a).

25. Plaintiffs' action in mandamus versus City of DuBois is authorized by Pa. R.C.P. §1091 et seq. and by case law construing actions in mandamus.

26. Under Pa. R.C.P. §1028(a)(4), a party may preliminarily object by way of a demurrer because of a legal insufficiency of a pleading.

WHEREFORE, Plaintiffs respectfully request this Honorable Court sustain Plaintiff's Preliminary Objections and strike Paragraph 76 of Defendant, City of DuBois's New Matter.

VI. PRELIMINARY OBJECTIONS RAISING LEGAL INSUFFICIENCY OF A PORTION OF DEFENDANT'S NEW MATTER UNDER Pa. R.C.P. §1028(a)(4) AND ALSO RAISING FAILURE TO CONFORM TO THE LAW UNDER 42 Pa. R.C.P. §1028(a)(2)

27. Paragraphs 62 through 64 of Defendant City of DuBois's New Matter attempts to set forth the affirmative defense of immunity from suit and/or governmental immunity.

28. The defense from immunity from suit and/or governmental immunity is not available in an action in mandamus.

29. Governmental Immunity, as provided for in 42 Pa.C.S.A. §8541 et seq., is only from monetary damages on account of any injury caused by an act of the local agency, its employee or any other person.

30. Plaintiffs' Complaint sets forth no claim for monetary damages versus Defendant, City of DuBois.

31. Under Pa. R.C.P. §1028(a)(2), a party may preliminarily object should another party's pleading fail to conform to law.

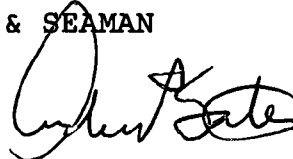


32. Under Pa. R.C.P. §1028(a)(4), a party may preliminarily object by way of a demurrer because of legal insufficiency of the pleading.

WHEREFORE, Plaintiffs request this Honorable Court to strike Paragraphs 62 through 64 of Defendant, City of DuBois's New Matter.

Respectfully submitted,

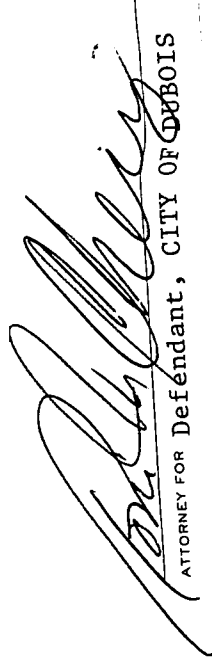
GATES & SEAMAN  
By:



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Andrew P. Gates, Esquire  
Attorney for Plaintiffs,  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy L.  
Way, Alfred William Wilson, Sharon  
Elizabeth Wilson, John E. Farr, and  
Catherine E. Farr

LAW OFFICES  
GLEASON, CHERRY & CHERRY, LLP.  
P. O. Box 505  
DuBois, PENNSYLVANIA 15801-0305  
ONE NORTH FRANKLIN STREET

  
ATTORNEY FOR DEFENDANT, CITY OF DUBOIS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

TIMOTHY J. FITZWATER,	:	No. 02 - 760 C.D.
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: EQUITY
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	Type of Pleading: AMENDED ANSWER,
SHARON ELIZABETH WILSON,	:	AMENDED NEW MATTER AND
ROBERT CURLEY, JOHN E. FARR,	:	AMENDED COUNTERCLAIM
and CATHERINE E. FARR,	:	
Plaintiffs	:	Filed on Behalf of: Defendant, CITY OF
	:	DUBOIS
vs.	:	
	:	Counsel of Record for this Party:
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	TONI M. CHERRY, ESQ.
and/or assigns and all other	:	Supreme Court No.: 30205
persons claiming any interest in the	:	
described property,	:	GLEASON, CHERRY AND
Defendants	:	CHERRY, L.L.P.
	:	Attorneys at Law
	:	P. O. Box 505
	:	One North Franklin Street
	:	DuBois, PA 15801
	:	
	:	(814) 371-5800

**FILED**

JUL 03 2003

**William A. Shaw**  
**Prothonotary**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs : No. 02 - 760 C.D.

vs. :

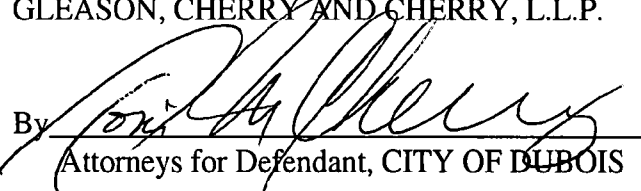
CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**NOTICE TO PLEAD**

To The Within Plaintiffs:

YOU ARE HEREBY NOTIFIED TO  
PLEAD TO THE WITHIN AMENDED NEW  
MATTER AND AMENDED COUNTERCLAIM  
WITHIN TWENTY (20) DAYS FROM  
THE DATE OF SERVICE HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By  :  
Attorneys for Defendant, CITY OF DUBOIS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

EQUITY ACTION

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs : No. 02 - 760 C.D.

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**AMENDED ANSWER**

AND NOW, comes the Defendant, CITY OF DUBOIS, by and through its attorneys,  
GLEASON, CHERRY AND CHERRY, L.L.P., and answers the Complaint of Plaintiffs as  
follows:

1. ADMITTED.
2. ADMITTED.
3. ADMITTED.
4. ADMITTED.
5. ADMITTED.

6. ADMITTED.

7. ADMITTED.

8. ADMITTED.

9. ADMITTED.

10. ADMITTED.

11. DENIED as stated. Defendant, CITY OF DUBOIS, believes and therefore avers that Plaintiff, ROBERT CURLEY, resides at 155 Schonwalder Road, Clearfield, Clearfield County, Pennsylvania 16830.

12. ADMITTED.

13. ADMITTED.

14. ADMITTED.

15. ADMITTED in part and DENIED in part. It is ADMITTED that Defendant, ELEANOR G. GRAFF, previously resided at 133 East Washington Avenue, DuBois, Clearfield County, Pennsylvania. All other aspects of Paragraph 15 are DENIED. ELEANOR G. GRAFF currently resides in a residential care facility near LaFayette, Indiana, and is completely incapacitated because she suffers from Alzheimer's Disease. Her daughter, Linda L. Bolam, is her Attorney-in-Fact and resides at 70 Wildwood Place, LaFayette, Indiana 47905.

16. ADMITTED.

17. ADMITTED.

18. ADMITTED.

19. ADMITTED.

20. ADMITTED.

21. DENIED. Plaintiff, ROBERT CURLEY, is not a tenant of real property located at 144 East Long Avenue, DuBois, Clearfield County, Pennsylvania. On the contrary, ROBERT CURLEY resides at 155 Schonwalder Road, Clearfield, Clearfield County, Pennsylvania 16830.

22. ADMITTED.

23. ADMITTED.

24. ADMITTED.

25. DENIED as stated. The one (1) family detached dwelling located on the premises of ELEANOR G. GRAFF is not a non-conforming use. On the contrary, said one (1) family detached dwelling is specifically permitted in an R-1, Residential District. It is further DENIED that the two (2) family detached dwelling located on said premises is a non-conforming use. On the contrary, multiple-family dwellings which would be three or more units are specifically permitted in an R-1 District under the current ordinances of the CITY OF DUBOIS. Since there are three units located on the Graff property, those units are specifically permitted in an R-1 Residential District. The size of the lot upon which the units are located is a non-conforming lot. However, by way of further answer, it is averred that the property of ELEANOR G. GRAFF would not be subject to the terms and provisions of Ordinance 1470 or any modification thereof because the dwellings were located on the lot and the lot was in existence prior to the time of the enactment of Ordinance No. 1470.

26. DENIED as stated. The one (1) family detached dwelling and the two (2) family detached dwelling are not non-conforming uses as multiple-family dwellings are permitted in

an R-1 Residential District. However, by way of further answer, it is averred that the property of ELEANOR G. GRAFF would not be subject to the terms and provisions of Ordinance No. 1470 or any modification thereof because the dwellings were located on said premises and the lot was in existence prior to the time of the enactment of Ordinance No. 1470.

27. DENIED. On the contrary, only Plaintiffs, Jay Faust and Sally Faust, and Plaintiffs, Alfred William Wilson and Sharon Elizabeth Wilson, own homes in the same neighborhood as the premises of Defendant, ELEANOR G. GRAFF. All of the other Plaintiffs' properties are located on other streets or on other blocks that would not be adjacent to or considered to be in the same neighborhood as the Graff premises.

28. DENIED. The two (2) family detached dwelling has not been vacant for a period in excess of four years nor has it ever ceased to be used by ELEANOR G. GRAFF as a two (2) family dwelling. At no time has ELEANOR G. GRAFF abandoned her use of said premises as a two (2) family detached dwelling but, on the contrary, the same remains a two (2) family dwelling to this date.

29. DENIED. The answer set forth in Paragraph 28 is incorporated herein by reference as if fully set forth at length herein.

30. DENIED as stated. The two (2) family detached dwelling of Defendant, ELEANOR G. GRAFF, had a waterline break in the year 2000 but that break was repaired. By further answer, it is averred that Defendant, ELEANOR G. GRAFF, is an elderly person who has had difficulty overseeing her properties because of her physical infirmities. At no time did Defendant, ELEANOR G. GRAFF, ever manifest any intent to abandon the use of the premises as a two (2) family detached dwelling.



31. DENIED as stated. The answer set forth in Paragraph 30 is incorporated herein by reference as if set forth at length herein.

32. DENIED as after reasonable investigation, Defendant, CITY OF DUBOIS, is without sufficient knowledge to attest to the truth or falsity of the averments set forth in Paragraph 32 and strict proof of same is required at trial.

33. DENIED as after reasonable investigation, Defendant, CITY OF DUBOIS, is without sufficient knowledge to attest to the truth or falsity of the averments set forth in Paragraph 33 and strict proof of same is required at trial.

34. DENIED as after reasonable investigation, Defendant, CITY OF DUBOIS, is without sufficient knowledge to attest to the truth or falsity of the averments contained in Paragraph 34 as the same is within the sole knowledge of the Plaintiffs and strict proof thereof is required at trial. By way of further answer, it is averred that determinations as to the need for repairs is solely within the province of the owner of the premises, ELEANOR G. GRAFF, and her determination of what repairs are needed to the subject premises and can be afforded by her are solely within her right as the owner and are in no way an indication of any intent to abandon the premises.

35. DENIED. The utility meters have not been removed.

36. DENIED as stated. On the contrary, said premises never ceased to be used as a two (2) family dwelling. Moreover, at no time did the Defendant, ELEANOR G. GRAFF, ever manifest to the CITY OF DUBOIS any intent to abandon the use of the premises as a two (2) family detached dwelling.

37. DENIED as stated. On the contrary, said premises never ceased to be used as a two (2) family dwelling. Moreover, at no time did the Defendant, ELEANOR G. GRAFF, ever manifest to the CITY OF DUBOIS any intent to abandon the use of the premises as a two (2) family detached dwelling.

38. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the two (2) family detached dwelling is a non-conforming use and it is DENIED that said dwelling has been abandoned as a two (2) family detached dwelling.

39. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant, ELEANOR G. GRAFF, has shown a settled purpose to abandon the use of the premises as a two (2) family detached dwelling. Moreover, it is DENIED that the dwelling is a non-conforming use. On the contrary, the use of said dwelling in conjunction with the other house located on the premises is a specifically permitted use in an R-1 District.

40. ADMITTED in part and DENIED in part. While it is ADMITTED that the properties of Defendant, ELEANOR G. GRAFF, are currently listed for sale, Defendant, CITY OF DUBOIS, believes and therefore avers from information it has received in this lawsuit, that the buyer for the premises has declined to consummate the sale due to legal action being brought in the instant case.

41. ADMITTED.

42. ADMITTED.

43. DENIED. No. representative authorized to receive such information was ever advised of any such information as set forth in Paragraph 43.

44. DENIED. On the contrary, the CITY OF DUBOIS has an appointed zoning officer.

45. DENIED. At no time has Defendant, CITY OF DUBOIS, ever acknowledged that the two (2) family detached dwelling had been abandoned. On the contrary, the CITY OF DUBOIS does not consider said property to have been abandoned by Defendant, ELEANOR G. GRAFF. The CITY OF DUBOIS does not consider the property of ELEANOR G. GRAFF to be in violation of any ordinances of the CITY OF DUBOIS and, accordingly, no enforcement proceedings are warranted against Defendant, ELEANOR G. GRAFF.

By way of further answer, it is averred that the decision to commence enforcement proceedings or to determine if enforcement proceedings are warranted is solely the province of the CITY OF DUBOIS and Plaintiffs cannot compel such action on the part of the CITY OF DUBOIS.

46. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is averred that there are no issues which would warrant a hearing before the Zoning Hearing Board of the CITY OF DUBOIS.

47. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant, ELEANOR G. GRAFF, has ever indicated any intent to abandon the premises located at 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Pennsylvania.

By way of further answer, it is averred that the premises owned by ELEANOR G. GRAFF was in use as multiple-family dwellings at the time that each and every one of the

Plaintiffs moved into their present residence. There has been no change in the use of the premises owned by Defendant, ELEANOR G. GRAFF, which would affect the over-crowding of the land, blight, danger or congestion in travel and transportation. Plaintiffs are estopped from raising any objection to the use of the premises as it was in use at the time that they moved into the neighborhood.

48. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that Defendant, ELEANOR G. GRAFF, has indicated actual abandonment of the property located at 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Pennsylvania.

By way of further answer, it is averred that the premises owned by ELEANOR G. GRAFF was in use as multiple-family dwellings at the time that each and every one of the Plaintiffs moved into their present residence. There has been no change in the use of the premises owned by Defendant, ELEANOR G. GRAFF, which would affect the over-crowding of the land, blight, danger or congestion in travel and transportation. Plaintiffs are estopped from raising any objection to the use of the premises as it was in use at the time that they moved into the neighborhood.

Moreover, at no time did Defendant, ELEANOR G. GRAFF, ever manifest to the CITY OF DUBOIS any intent to abandon the use of said premises.

49. DENIED. Defendant, ELEANOR G. GRAFF, has not committed any violation of any of the zoning ordinances of the CITY OF DUBOIS. The area surrounding the premises owned by Defendant, ELEANOR G. GRAFF, does not suffer from over-crowding, blight, danger or congestion in travel or transportation and is just like every other older neighborhood

in the CITY OF DUBOIS. The premises owned by ELEANOR G. GRAFF was in use as multiple-family dwellings at the time that each and every one of the Plaintiffs moved into their present residence. There has been no change in the use of the premises owned by Defendant, ELEANOR G. GRAFF, which would affect the over-crowding of the land, blight, danger or congestion in travel and transportation. Plaintiffs are estopped from raising any objection to the use of the premises as it was in use at the time that they moved into the neighborhood.

Moreover, by way of further answer, it is averred that a determination of whether Defendant, ELEANOR G. GRAFF, has committed any violation of any zoning ordinances of the CITY OF DUBOIS is solely the province of the CITY OF DUBOIS and any determination as to whether enforcement proceedings are warranted is solely within the discretionary power of the CITY OF DUBOIS and Plaintiffs cannot compel the CITY OF DUBOIS to determine that a violation has been committed or that enforcement proceedings are necessary.

50. DENIED. Defendant, ELEANOR G. GRAFF, has not committed any zoning violation. The premises owned by ELEANOR G. GRAFF was in use as multiple-family dwellings at the time that each and every one of the Plaintiffs moved into their present residence. There has been no change in the use of the premises owned by Defendant, ELEANOR G. GRAFF, which would affect the over-crowding of the land, blight, danger or congestion in travel and transportation. Plaintiffs are estopped from raising any objection to the use of the premises as it was in use at the time that they moved into the neighborhood.

It is further DENIED that the area surrounding the premise of ELEANOR G. GRAFF suffers from over-crowding of land, blight, danger and congestion in travel and

transportation. On the contrary, the area surrounding the lot of ELEANOR G. GRAFF is an older neighborhood and is similar to all other older neighborhoods in the CITY OF DUBOIS and is substantially the same now as it was at the time when Plaintiffs moved into the neighborhood.

Moreover, by way of further answer, it is averred that a determination of whether Defendant, ELEANOR G. GRAFF, has committed any violation of any zoning ordinances of the CITY OF DUBOIS is solely the province of the CITY OF DUBOIS and any determination as to whether enforcement proceedings are warranted is solely within the discretionary power of the CITY OF DUBOIS and Plaintiffs cannot compel the CITY OF DUBOIS to determine that a violation has been committed or that enforcement proceedings are necessary.

51. DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the zoning ordinances of Defendant, CITY OF DUBOIS, have any bearing upon the use of the land of ELEANOR G. GRAFF as said premises predated all of the zoning ordinances of the CITY OF DUBOIS. By way of further answer, it is averred that the premises owned by Defendant, ELEANOR G. GRAFF, does not pose a threat of loss of health, life or property nor does said premises cause over-crowding of land, blight or danger and congestion in travel and transportation. By way of further answer, it is averred that the use made by Defendant, ELEANOR G. GRAFF, of her property does not violate any of the ordinances of the CITY OF DUBOIS.

Moreover, by way of further answer, it is averred that a determination of whether Defendant, ELEANOR G. GRAFF, has committed any violation of any zoning

ordinances of the CITY OF DUBOIS is solely the province of the CITY OF DUBOIS and any determination as to whether enforcement proceedings are warranted is solely within the discretionary power of the CITY OF DUBOIS and Plaintiffs cannot compel the CITY OF DUBOIS to determine that a violation has been committed or that enforcement proceedings are necessary.

52. (sic 50) DENIED as a conclusion of law to which no response is required. Insofar as a response is required, it is DENIED that the zoning ordinances of the CITY OF DUBOIS govern the use of the premises owned by ELEANOR G. GRAFF as said premises were in existence and in use prior to the enactment of the zoning ordinances of the CITY OF DUBOIS. By way of further answer, it is averred that the use made by Defendant, ELEANOR G. GRAFF, of her property does not violate any of the ordinances of the CITY OF DUBOIS.

Moreover, by way of further answer, it is averred that a determination of whether Defendant, ELEANOR G. GRAFF, has committed any violation of any zoning ordinances of the CITY OF DUBOIS is solely the province of the CITY OF DUBOIS and any determination as to whether enforcement proceedings are warranted is solely within the discretionary power of the CITY OF DUBOIS and Plaintiffs cannot compel the CITY OF DUBOIS to determine that a violation has been committed or that enforcement proceedings are necessary.

WHEREFORE, Defendant, CITY OF DUBOIS, requests your Honorable Court to dismiss Plaintiffs' Complaint with prejudice.

## **AMENDED NEW MATTER**

53. Defendant, CITY OF DUBOIS, hereby incorporates the answers set forth in Paragraphs 1 through 52 inclusive of the foregoing Amended Answer as if the same were fully set forth herein at length.

54. Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

55. The CITY OF DUBOIS does not consider that the use by Defendant, ELEANOR G. GRAFF, of the premises located at 133, 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, to have been abandoned by ELEANOR G. GRAFF.

56. Defendant, ELEANOR G. GRAFF, has never manifested to the CITY OF DUBOIS any intent to abandon the use of the premises situate at 133-1/2 and 135-1/2 East Washington Avenue as a two (2) family dwelling.

57. That the premises located at 133 East Washington Avenue, DuBois, Clearfield County, Pennsylvania, was in existence and in use as a single family dwelling prior to the enactment of all zoning ordinances of the CITY OF DUBOIS.

58. That the premises located at 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, was in existence and in use prior to the enactment of all of the zoning ordinances of the CITY OF DUBOIS.

59. That the 50' x 150' lot upon which the buildings known as 133, 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, was in existence and the buildings currently located thereon were so located prior to the enactment of any of the zoning ordinances of the CITY OF DUBOIS.



60. That the buildings and real property located at 133, 133-1/2 and 135-1/2 East Washington Avenue, DuBois, Clearfield County, Pennsylvania 15801, were in existence and in use at the time that each and every one of the Plaintiffs moved into his respective residence.

61. Plaintiffs are estopped from now complaining that the existence of the properties at 133, 133-1/2 and 135-1/2 East Washington Avenue cause over-crowding of land, blight or danger and congestion in travel and transportation.

62. Plaintiffs' claims are barred by the defense of estoppel.

63. That the CITY OF DUBOIS has made no determination that the use of the premises at 133, 133-1/2 and 135-1/2 East Washington Avenue by the owner of said premises has been abandoned.

64. That the CITY OF DUBOIS cannot be compelled to enforce any of its ordinances or to commence any action for enforcement thereof under 53 P.S. §10617.2(c).

65. That the CITY OF DUBOIS is immune from any suit by any individual to attempt to force the CITY OF DUBOIS to make such a determination.

66. Plaintiffs' cause of action is therefore barred by the defense of immunity from suit.

67. Plaintiffs have averred that the premises in question has been abandoned for more than four years but Plaintiffs did not commence their suit until after Defendant, ELEANOR G. GRAFF, had advertised the premises for sale as a single family dwelling and a double family dwelling and had secured a buyer for the premises based on that representation.

68. The delay in filing the Complaint was due entirely to Plaintiffs.

69. Defendants have, by virtue of the aforesaid, been prejudiced by this delay.

70. Plaintiffs are guilty laches.

71. Plaintiffs' cause of action against Defendants is accordingly barred by the defense of laches.

72. The applicable Pennsylvania statute of limitation, 42 Pa. Cons. Stat. Ann. §5522, requires that suit on a cause of action against a government unit be commenced within six (6) months of the date on which the cause of action accrued.

73. Any cause of action Plaintiffs might have had would have accrued on the date which is one (1) year from the time that Plaintiffs maintain the subject premises was abandoned and Plaintiffs' action was not commenced until May 14, 2002, which is beyond the applicable statutory period of limitation.

74. Plaintiffs' action is accordingly barred by the applicable statute of limitation.

75. In the event that Plaintiffs' action is governed by another statute of limitation, Defendant asserts that Plaintiffs' action is also barred by that applicable statute of limitation.

76. That the action of the Plaintiffs seeks to deprive the CITY OF DUBOIS of the revenue it receives from real estate taxes paid on the premises known as 133, 133-1/2 and 135-1/2 East Washington Avenue in the City of DuBois, Clearfield County, Pennsylvania.

77. That the action of the Plaintiffs is void as being against public policy.

78. That in order to receive relief from a court sitting in equity, Plaintiffs must come into court with "clean hands".

79. That Plaintiffs do not come into court with "clean hands" as they permitted Defendant, ELEANOR G. GRAFF, to advertise the premises at 133-1/2 and 135-1/2 East Washington Avenue for sale as a two (2) family dwelling and to secure a buyer for the

premises knowing that they intended to attempt to stop the sale and prevent ELEANOR G. GRAFF from completing the terms of the sales agreement she entered into with her buyer.

80. That Plaintiffs do not come into court with "clean hands" because some of the Plaintiffs are also guilty of violating zoning ordinances of the CITY OF DUBOIS but do not request that the CITY OF DUBOIS enforce those ordinances that have been violated against them.

81. That every property of each of the Plaintiffs fails to conform with the current zoning ordinance of the CITY OF DUBOIS.

82. That the action of the Plaintiffs is barred by the "clean hands" doctrine.

WHEREFORE, Defendant, CITY OF DUBOIS, respectfully requests that this Court enter judgment in its favor and against Plaintiffs for all consequential and incidental damages, including reasonable attorney's fees and costs and such other and further relief as this Court deems just and proper.

### **AMENDED COUNTERCLAIM**

83. Defendant, CITY OF DUBOIS, Plaintiff in this Amended Counterclaim, hereby incorporates herein by reference the averments contained in Paragraphs 53 through 82 inclusive of the foregoing Amended New Matter as if the same were set forth at length herein.

84. That in addition to the failure of the premises owned by LAWRENCE M. WAY and AMY L. WAY at 160 East Long Avenue to conform to side and rear yard set-back requirements contained in the ordinances of the CITY OF DUBOIS, Plaintiffs, LAWRENCE M. WAY and AMY L. WAY, are in violation of said ordinances because they have located

their garage at a location on their premises which is too close to the right-of-way of the CITY OF DUBOIS.

85. That the CITY OF DUBOIS demands that said garage be removed from said site.

86. That the premises owned by Plaintiffs, TIMOTHY J. FITZWATER and LISA A. FITZWATER, at 146 East Long Avenue does not conform to the rear yard set-back requirements of the ordinances of the CITY OF DUBOIS and, in addition, Plaintiffs FITZWATER are actually in violation of the ordinances of the CITY OF DUBOIS because their garage is located too close to the right-of-way of the CITY OF DUBOIS.

86. That the CITY OF DUBOIS demands that said garage be moved to a location beyond the distance required from its rights-of-way.

87. That the premises of JAY L. FAUST and SALLY L. FAUST fail to conform to the lot size requirements and lot coverage requirements of the ordinances of the CITY OF DUBOIS.

88. That the premises owned by Plaintiffs, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, fail to conform to the rear yard set-back requirements as well as the lot size and lot coverage requirements of the ordinances of the CITY OF DUBOIS.

89. Defendant, CITY OF DUBOIS, has been compelled to retain counsel to defend itself in this action and has engaged Toni M. Cherry at the rate of \$150.00 per hour.

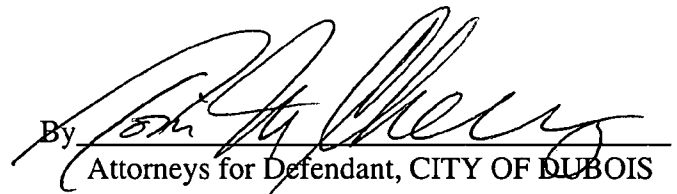
90. The institution of this action by the Plaintiffs against Defendant, CITY OF DUBOIS, is arbitrary, capricious, vexatious and mean-spirited.

91. Therefore, the CITY OF DUBOIS is entitled to collect counsel fees and Court costs from the Plaintiffs pursuant to 42 Pa. C.S.A. §2503.

WHEREFORE, CITY OF DUBOIS prays your Honorable Court to enter a judgment in its favor and against Plaintiffs for all consequential and incidental damages, including an Order requiring the removal of the violating garages, reasonable attorney's fees and costs and such other and further relief as your Honorable Court deems just and proper.

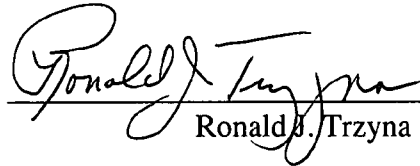
Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

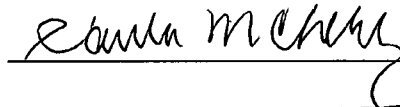
By   
Attorneys for Defendant, CITY OF DUBOIS

COMMONWEALTH OF PENNSYLVANIA :  
: SS.  
COUNTY OF CLEARFIELD :

Personally appeared before me, a Notary Public in and for the County and State  
aforesaid, RONALD J. TRZYNA, who, being duly sworn according to law, deposes and says  
that he is the City Manager of the CITY OF DUBOIS and as such City Manager is authorized  
to make this Affidavit on behalf of the Defendant, CITY OF DUBOIS, as City Manager and  
that the facts set forth in the foregoing Amended Answer, Amended New Matter and Amended  
Counterclaim are true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Ronald J. Trzyna

Sworn to and subscribed before me this 3<sup>rd</sup> day of July, 2003.

  
\_\_\_\_\_

NOTARIAL SEAL  
PAULA M. CHERRY, NOTARY PUBLIC  
CITY OF DUBOIS, CLEARFIELD COUNTY  
MY COMMISSION EXPIRES SEPTEMBER 16, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs : No. 02 - 760 C.D.

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of July, 2003, a true and correct copy of the Amended Answer, Amended New Matter and Amended Counterclaim was served upon the following persons by mailing the same to them by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

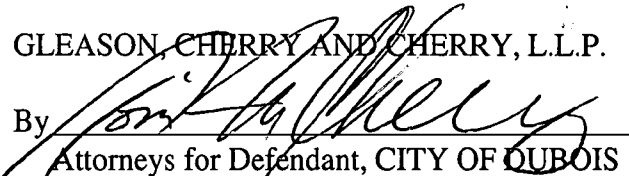
Andrew P. Gates, Esq.  
Gates & Seaman  
Attorneys at Law  
P. O. Box 846  
Clearfield, PA 16830

Peter F. Smith, Esq.  
Attorney at Law  
P. O. Box 130  
Clearfield, PA 16830

Mr. Robert Curley  
144 East Long Avenue  
DuBois, PA 15801

Mr. and Mrs. Daniel Lee  
206 East Washington Avenue  
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By   
Attorneys for Defendant, CITY OF DUBOIS


Dated: July 3, 2003

FILED

JUL 03 2003

0/3:08 p.m.

William A. Shaw  
Prothonotary

8 cc to atty 



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY L. :  
WAY, DANIEL LEE, EVA LEE, :  
ALFRED WILLIAM WILSON, SHARON :  
ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR, and :  
CATHERINE E. FARR, :  
Plaintiffs :

vs. :

CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest :  
in the described property, :  
Defendant :

No. 02- 760 -CD

Type of Case: EQUITY

Type of Pleading: Plaintiffs,  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy L.  
Way, Alfred William Wilson,  
Sharon Elizabeth Wilson, John  
E. Farr, and Catherine E.  
Farr, Preliminary Objections  
to Amended Answer, New Matter  
and Counterclaim of  
Defendant, City of DuBois

Filed on behalf of: Plaintiffs  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy  
L. Way, Alfred William Wilson,  
Sharon Elizabeth Wilson, John  
E. Farr and Catherine E. Farr

Counsel of Record for this  
Party:  
Andrew P. Gates, Esquire

Supreme Court No.: 36604

GATES & SEAMAN  
Attorneys at law  
Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

FILED

JUL 24 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL :  
LEE, EVA LEE, ALFRED WILLIAM WILSON :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :  
Plaintiffs : No. 02-760-CD  
-vs- : In Equity  
CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest in :  
the described property, :  
Defendant :

PLAINTIFFS, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON, JOHN E. FARR, AND CATHERINE E. FARR,  
PRELIMINARY OBJECTIONS TO AMENDED ANSWER, AMENDED NEW MATTER AND  
AMENDED COUNTERCLAIM OF DEFENDANT, CITY OF DUBOIS

The aforementioned Plaintiffs, by and through their attorneys, Gates and Seaman, preliminarily object to the Amended Answer, Amended New Matter and Amended Counterclaim of Defendant, City of DuBois, as follows:

I. PRELIMINARY OBJECTIONS IN NATURE OF A DEMURRER UNDER PA. R. C. P. §1028(a)(4)

1. Paragraphs 89 through 91 of Defendant, City of DuBois's Amended Counterclaim seeks counsel fees and court costs pursuant to 42 Pa.C.S.A. §2503.

2. Paragraphs 84 through 88 of City of DuBois' Amended Counterclaim alleges certain of Plaintiffs' properties violate unspecified City Ordinances and seeks injunctive relief from the Court to compel removal and/or the relocation of certain garages.

3. The relief sought by Plaintiffs in their Complaint is privileged and justified since pursuit of such an action is authorized pursuant to 53 P.S. §10617, as is in Plaintiffs' request that a Zoning Officer be appointed by the City as mandated under 53 P.S. §10614.

4. The allegations set forth in Paragraph 84 through 88 of the City of DuBois' Amended Counterclaim are so unspecific and otherwise insufficient since they identify no particular City Ordinance, nor any material part thereof, which it asserts Plaintiffs have violated.

5. As currently plead, Paragraph 84 through 88 of the City's Amended Counterclaim do not provide Plaintiffs with sufficient detail to be able to prepare a defense.

6. The relief requested by the City in its Amended Counterclaim, (i.e. that a referenced garage be removed), is clearly motivated by bad faith and is otherwise retaliatory in nature.

7. The City's allegations in their Amended Counterclaim have no basis in fact (the improvements on Plaintiffs properties have been in place since before the enactment of any relevant City Ordinance) and represent nothing more than the City's effort to discourage lawsuits being brought against it even though the claims and relief sought by these Plaintiffs are justified and/or privileged under existing law.

8. To permit the City's Amended Counterclaims to proceed will have a chilling effect on aggrieved parties right to seek legal redress which are recognized and protected under existing law.

9. Under Pa. R.C.P. §1028(a)(4), a party may preliminary object by way of a demurrer because of the legal insufficiencies in a pleading.

WHEREFORE, the aforementioned Plaintiffs respectfully request that this Court sustain Plaintiffs' Preliminary Objection and strike Defendant, City of DuBois's Amended Counterclaims seeking (i) both counsel fees and costs under 42 Pa.C.S.A. §2503; and (ii) Defendant City's request for injunctive relief in the form of an Order seeking either the removal and/or moving of certain of Plaintiff's garages.

II. PRELIMINARY OBJECTIONS RAISING FAILURE TO CONFORM TO 42 Pa. R.C.P. No. 1510(a)

10. The Amended Counterclaim of Defendant, City of DuBois, in Paragraphs 89 through 91 thereof states "The institution of this action by Plaintiffs against Defendant, City of DuBois, is arbitrary, capricious, vexatious and mean spirited" and seeks counsel fees and Court costs pursuant to 42 Pa. C.S.A. §2503.

11. Pa. R.C.P. 1510(a) requires that a Defendant may plead as a counterclaim only a cause of action, whether equitable

or legal, which arises from the same transaction or occurrence, or series of transactions or occurrences, from which the Plaintiffs' cause of action arose.

12. Said Defendant's Amended Counterclaim as asserted in Paragraphs 89 through 91 thereof bears no direct relationship to the issues raised in Plaintiffs' Complaint and is otherwise collateral to Plaintiffs' cause of action.

13. Said Defendant's Amended Counterclaim asserted in Paragraphs 89 through 91 thereof is based on the mere fact that Plaintiffs instituted the present proceedings against the Defendants, as they are authorized to do under 53 P.S. §10617, since Defendant Graff has sought to maintain, use and sell the real estate in question in contravention to the City of DuBois Zoning Ordinance and the City of DuBois has taken no action to enforce said Ordinance.

14. Claims for counsel fees and costs under 42 Pa.C.S.A. §2503 may only be imposed "as part of the taxable costs", at the conclusion of the underlying matter.

15. Under Pa. R.C.P. 1028(a)(4), a party may preliminarily object by way of demurrer because of a legal insufficiency of a pleading.

16. Under Pa. R.C.P. 1028(a)(2), a party may preliminarily object should another parties' pleading fail to conform to law or rule of Court, in this case, Pa. R.C.P. §1510(a).

WHEREFORE, Plaintiffs respectfully request that this Court sustain Plaintiffs' Preliminary Objections and strike the City of DuBois's Amended Counterclaim seeking counsel fees and Court costs under 42 Pa. C.S.A. §2503.

III. PRELIMINARY OBJECTIONS RAISING FAILURE TO CONFORM TO 42 Pa. R.C.P. §1028(a)(2)

17. Paragraph 90 of Defendant, City of DuBois's Amended Counterclaim sets forth that the institution of this action by Plaintiffs is arbitrary, capricious, vexatious and mean spirited.

18. The allegations in Paragraph 90 in said Defendant's Amended Counterclaim does nothing more than attempt to impugn Plaintiffs' character, honesty and motive in bringing this action.

19. The allegations set forth in Paragraph 90 of said Defendant's Amended Counterclaim are scandalous, impertinent, irrelevant, immaterial and inappropriate to the cause of action asserted by Plaintiffs' and are in violation of the pleading requirements of Pa. R.C.P. §1019(a).

WHEREFORE, the aforementioned Plaintiffs respectfully request that this Court sustain this Preliminary Objection and strike Paragraph 90 of Defendant, City of DuBois's Amended Counterclaim.

IV. PRELIMINARY OBJECTIONS TO THOSE PORTIONS OF DEFENDANT, CITY OF DUBOIS'S AMENDED NEW MATTER STATING PLAINTIFFS' COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED DUE TO THE LEGAL INSUFFICIENCY AND LACK OF SUPPORTING ALLEGATIONS UNDER Pa. R.C.P. §1028(a)(4)

20. Paragraph 54 of Defendant, City of DuBois's Amended New Matter sets forth that "Plaintiffs' Complaint fails to state a claim upon which relief may be granted".

21. The allegations set forth in Paragraph 54 of said Defendant's Amended New Matter are essentially challenging the legal sufficiency of Plaintiffs' Complaint.

22. Defendant, City of DuBois, previously, in its Preliminary Objections, claimed that "Plaintiffs have no cause of action against the City of DuBois to compel it to enforce its ordinances.".

23. Following argument and consideration of briefs, filed by Plaintiffs', pro se, and Defendant, City of DuBois, this Honorable Court dismissed said Defendant's Preliminary Objections by Order dated February 14, 2003.

24. Plaintiffs' Complaint alleges sufficient facts showing that they have a beneficial interest distinct from that of the general public.

25. Plaintiffs' Complaint contains a prayer requesting that the City of DuBois be ordered to immediately initiate enforcement proceedings pursuant to 53 P.S. §10616.1 and DuBois Ordinance No. 1470, §704 against property owner, Defendant, Eleanor G. Graff.

26. Plaintiffs' Complaint also contains a prayer requesting that the City of DuBois be ordered to immediately

appoint a Zoning Officer pursuant to 53 P.S. §10614 and Ordinance No. 1470 §700.

27. Plaintiffs have a viable cause of action versus Defendant, City of DuBois, to compel said Defendant to perform public acts and/or duties which said Defendant undertook by enacting Ordinance No. 1470 and as they are required to do pursuant to 53 P.S. § 10614.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court sustain Plaintiffs' Preliminary Objections and strike Paragraph 54 of said Defendant's New Matter.

V. PRELIMINARY OBJECTIONS RAISING LEGAL INSUFFICIENCY OF A PORTION OF DEFENDANT'S AMENDED NEW MATTER UNDER Pa. R.C.P. § 1028(a)(4)

28. Paragraph 77 of Defendant, City of DuBois's Amended New Matter claims that "the action of Plaintiffs is void as being against public policy".

29. The claimed defense that an action is void as being against public policy is not a listed affirmative defense under Pa. R.C.P. §1030(a).

30. Said Defendant's Amended New Matter identifies no potential injury to the general public should Plaintiff's claims for relief be granted.

31. The loss of tax revenues to the City, should this Court Order the duplex be demolished, have no bearing on public policy.



32. Under Pa. R.C.P. §1028(a)(4), a party may preliminary object by way of a demurrer because of a legal insufficiency of a pleading.

WHEREFORE, Plaintiffs respectfully request this Honorable Court sustain Plaintiff's Preliminary Objections and strike Paragraph 77 of Defendant, City of DuBois's Amended New Matter.

VI. PRELIMINARY OBJECTIONS RAISING LEGAL INSUFFICIENCY OF A PORTION OF DEFENDANT'S AMENDED NEW MATTER UNDER Pa. R.C.P. §1028(a)(4) AND ALSO RAISING FAILURE TO CONFORM TO THE LAW UNDER 42 Pa. R.C.P. §1028(a)(2)

33. Paragraphs 65 through 66 of Defendant City of DuBois's Amended New Matter attempts to set forth the affirmative defense of immunity from suit and/or governmental immunity.

34. Governmental Immunity, as provided for in 42 Pa.C.S.A. §8541 et seq., is only from monetary damages on account of any injury caused by an act of the local agency, its employee or any other person.

35. Plaintiffs' Complaint sets forth no claim for monetary damages versus Defendant, City of DuBois.

36. Under Pa. R.C.P. §1028(a)(2), a party may preliminarily object should another party's pleading fail to conform to law.

37. Under Pa. R.C.P. §1028(a)(4), a party may preliminarily object by way of a demurrer because of legal

insufficiency of the pleading.

WHEREFORE, Plaintiffs request this Honorable Court to strike Paragraphs 65 through 66 of Defendant, City of DuBois's Amended New Matter.

Respectfully submitted,

GATES & SEAMAN

By:

A handwritten signature in dark ink, appearing to read "Andrew P. Gates", is written over a horizontal line.

Andrew P. Gates, Esquire  
Attorney for Plaintiffs,  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy L.  
Way, Alfred William Wilson, Sharon  
Elizabeth Wilson, John E. Farr, and  
Catherine E. Farr

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

No. 02-760-CD  
In Equity

TIMOTHY J. FITZWATER, LISA A.  
FITZWATER, JAY FAUST, SALLY FAUST,  
LAWRENCE M. WAY, AMY L. WAY, DANIEL  
LEE, EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON, ROBERT  
CURLEY, JOHN E. FARR and CATHERINE  
E. FARR,  
Plaintiffs

vs.

CITY OF DUBOIS and ELEANOR G.  
GRAFF, her successors and/or  
assigns and all other persons  
claiming any interest in the  
described property, Defendants

Plaintiffs, Timothy J. Fitzwater,  
Lisa A. Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy L. Way,  
Alfred William Wilson, Sharon Elizabeth  
Wilson, John E. Farr, and Catherine

E. Farr, Preliminary Objections  
to Amended Answer, New Matter and  
Counterclaim of Defendant City of  
Dubois

019 38.184

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Amy Gates

Si

LAW OFFICES  
GATES & SEAMAN  
2 NORTH FRONT STREET  
P.O. BOX 846  
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL: :  
LEE, EVA LEE, ALFRED WILLIAM WILSON: :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :  
Plaintiffs : No. 02-760-CD  
-vs- : In Equity  
CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns and all other persons :  
claiming any interest in the :  
described property, :  
Defendants :

CERTIFICATE  
PREREQUISITE TO SERVICE OF A SUBPOENA  
PURSUANT TO RULE 4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Andrew P. Gates, Esquire, Attorney for Plaintiffs certifies that:

(1) Notice of Intent to Serve three Subpoenas with a copy of each Subpoena being attached to said Notice was mailed to each party or their counsel of record at least twenty (20) days prior to the date on which each Subpoena is sought to be served (Certificates of Mailing are attached hereto and made a part hereof as Exhibit "A");

(2) a copy of the Notice of Intent, including the proposed Subpoenas, are attached to this certificate and made a part hereof as Exhibits "B";

(3) no objection to the Subpoenas has been received; and

(4) The Subpoenas which will be served are identical to the Subpoenas which are attached to the Notice Of Intent To Serve the Subpoenas.

Date:

July 11, 2003

**FILED**

JUL 11 2003

William A. Shaw  
Prothonotary

  
Andrew P. Gates, Esquire  
Attorney for Plaintiffs

Law Offices of Gates & Seaman  
2 North Front Street  
P. O. Box 846  
Clearfield, PA 16830

U.S. POSTAL SERVICE **CERTIFICATE OF MAILING**

MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT  
PROVIDE FOR INSURANCE-POSTMASTER

Received From: **GATES & SEAMAN**  
 \_\_\_\_\_ **2 North Front Street**  
 \_\_\_\_\_ **P.O. Box 846**  
 \_\_\_\_\_ **Clearfield, PA 16830**

One piece of ordinary mail addressed to:

**Toni M. Cherry, Esquire**  
**P. O. Box 505**  
**DuBois, PA 15801**

UNITED STATES  
POSTAL SERVICE

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U.S. POSTAGE  
PAID  
CLEARFIELD, PA  
16830-03  
JUN 17 2003  
\$0.90  
00085835-03

PS Form **3817**, January 2001

\_\_\_\_\_ **Clearfield, PA 16830**

One piece of ordinary mail addressed to:

**Peter F. Smith, Esquire**  
**P. O. Box 130**  
**Clearfield, PA 16830**

U.S. POSTAGE  
PAID  
CLEARFIELD, PA  
16830-03  
JUN 17 2003  
\$0.90  
00085835-03

PS Form **3817**, January 2001

\_\_\_\_\_ **Clearfield, PA 16830**

One piece of ordinary mail addressed to:

**Mr. and Mrs. Daniel Lee**  
**206 East Washington Avenue**  
**DuBois, PA 15801**

U.S. POSTAGE  
PAID  
CLEARFIELD, PA  
16830-03  
JUN 17 2003  
\$0.90  
00085835-03

PS Form **3817**, January 2001

PROVIDE FOR INSURANCE

Received From: **GATES & SEAMAN**  
 \_\_\_\_\_ **2 North Front Street**  
 \_\_\_\_\_ **P.O. Box 846**  
 \_\_\_\_\_ **Clearfield, PA 16830**

One piece of ordinary mail addressed to:

**Mr. Robert Curley**  
**155 Scholwalder Road**  
**Clearfield, PA 16830**

U.S. POSTAGE  
PAID  
CLEARFIELD, PA  
16830-03  
JUN 17 2003  
\$0.90  
00085835-03

UNITED STATES  
POSTAL SERVICE

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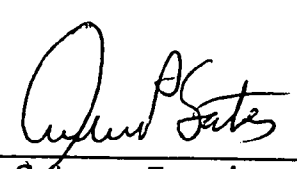
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL: :  
LEE, EVA LEE, ALFRED WILLIAM WILSON: :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :  
Plaintiffs : No. 02-760-CD  
-vs- : In Equity  
CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns and all other persons :  
claiming any interest in the :  
described property, :  
Defendants :

NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE  
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

Plaintiffs, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, JOHN E. FARR, CATHERINE E. FARR, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON, through and by their Attorney, Andrew P. Gates, Esquire, intend to serve Subpoenas identical to the ones that are attached to this Notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an Objection to the Subpoenas. If no objection is made, the Subpoenas may be served.

Date: June 17, 2003

  
Andrew P. Gates, Esquire

LAW OFFICES OF GATES & SEAMAN  
2 North Front Street  
P. O. Box 846  
Clearfield, Pennsylvania 16830  
(814) 765-1766

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL: :  
LEE, EVA LEE, ALFRED WILLIAM WILSON: :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :  
Plaintiffs : No. 02-760-CD  
-vs- : In Equity  
CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns and all other persons :  
claiming any interest in the :  
described property, :  
Defendants :

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY  
PURSUANT TO RULE 4009.22

TO: MEDRED REALTY ASSOCIATES  
R. R. #8, Box 22  
DuBois, PA 15801

Within twenty (20) days after service of this Subpoena, you are ordered by the Court to produce the following documents or things:

(a) complete copy of your entire office file and any other records pertaining to the real estate of Eleanor G. Graff, situate at 133, 133 ½ and 135 ½ East Washington Avenue, DuBois, Pennsylvania 15801. The documents to be produced (including all pages and attachments) shall include but not be limited to: all listing agreements, sales agreements, brokerage agreements, real estate appraisals performed on subject property, memorandums, notes from discussions with Eleanor G. Graff, her agents and/or attorneys-in-fact, correspondence to and from Eleanor G. Graff, her agents, attorneys-in-fact, and/or legal representatives, notes from inspection appearances and showings, photographs of premises, videos of premises, mortgage applications of any prospective buyers, responses from lenders to mortgage applications of prospective buyers, disclosure statements of

seller, her agents, attorneys-in-fact and/or legal representative, copies of power of attorneys or court order pertaining to Eleanor G. Graff and other written material in your possession pertaining to said real estate. Said documents to be produced or are to be provided to Andrew P. Gates, Esquire, 2 North Front Street, P. O. Box 846, Clearfield, Pennsylvania 16830.

You may deliver or mail legible copies of the documents or produce things requested by this Subpoena, together with the Certificate of Compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this Subpoena within twenty (20) days after its service, the party serving the Subpoena may seek a Court Order compelling you to comply with it.

This Subpoena was issued at the request of the following person: Andrew P. Gates, Esquire, Pennsylvania Bar Identification Number: 36604, Address: 2 North Front Street, P. O. Box 846, Clearfield, Pennsylvania 16830; telephone number (814) 765-1766, Attorney for Plaintiffs/Petitioners, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, JOHN E. FARR, CATHERINE E. FARR, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON.

BY THE COURT:

Date: \_\_\_\_\_

\_\_\_\_\_  
Prothonotary

(SEAL)



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL: :  
LEE, EVA LEE, ALFRED WILLIAM WILSON: :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, :  
Plaintiffs : No. 02-760-CD  
-vs- : In Equity  
CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns and all other persons :  
claiming any interest in the :  
described property, :  
Defendants :

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY  
PURSUANT TO RULE 4009.22

TO: STEMMERICH REALTY  
150 West DuBois Avenue  
DuBois, PA 15801

Within twenty (20) days after service of this Subpoena, you are ordered by the Court to produce the following documents or things:

(a) complete copy of your entire office file and any other records pertaining to the real estate of Eleanor G. Graff, situate at 133, 133 ½ and 135 ½ East Washington Avenue, DuBois, Pennsylvania 15801. The documents to be produced (including all pages and attachments) shall include but not be limited to: all listing agreements, sales agreements, brokerage agreements, real estate appraisals performed on subject property, memorandums, notes from discussions with Eleanor G. Graff, her agents and/or attorneys-in-fact, correspondence to and from Eleanor G. Graff, her agents, attorneys-in-fact, and/or legal representatives, notes from inspection appearances and showings, photographs of premises, videos of premises, mortgage applications of any prospective buyers, responses from lenders to mortgage applications of prospective buyers, disclosure statements of

seller, her agents, attorneys-in-fact and/or legal representative, copies of power of attorneys or court order pertaining to Eleanor G. Graff and other written material in your possession pertaining to said real estate. Said documents to be produced or are to be provided to Andrew P. Gates, Esquire, 2 North Front Street, P. O. Box 846, Clearfield, Pennsylvania 16830.

You may deliver or mail legible copies of the documents or produce things requested by this Subpoena, together with the Certificate of Compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this Subpoena within twenty (20) days after its service, the party serving the Subpoena may seek a Court Order compelling you to comply with it.

This Subpoena was issued at the request of the following person: Andrew P. Gates, Esquire, Pennsylvania Bar Identification Number: 36604, Address: 2 North Front Street, P. O. Box 846, Clearfield, Pennsylvania 16830; telephone number (814) 765-1766, Attorney for Plaintiffs/Petitioners, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, JOHN E. FARR, CATHERINE E. FARR, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON.

BY THE COURT:

Date: \_\_\_\_\_

\_\_\_\_\_  
Prothonotary

(SEAL)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, LISA A.	:	
FITZWATER, JAY FAUST, SALLY FAUST,	:	
LAWRENCE M. WAY, AMY L. WAY, DANIEL:	:	
LEE, EVA LEE, ALFRED WILLIAM WILSON:	:	
SHARON ELIZABETH WILSON, ROBERT	:	
CURLEY, JOHN E. FARR and CATHERINE	:	
E. FARR,	:	
	:	
Plaintiffs	:	No. 02-760-CD
	:	
-vs-	:	In Equity
	:	
CITY OF DUBOIS and ELEANOR G.	:	
GRAFF, her successors and/or	:	
assigns and all other persons	:	
claiming any interest in the	:	
described property,	:	
	:	
Defendants	:	

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY  
PURSUANT TO RULE 4009.22

TO: DENNIS P. KENNELLY  
R. R. #1, Box 40-C  
Reynoldsville, PA 15851

Within twenty (20) days after service of this Subpoena, you are ordered by the Court to produce the following documents or things:

(a) complete copy of your entire office file and any other records pertaining to the real estate of Eleanor G. Graff, situate at 133, 133 ½ and 135 ½ East Washington Avenue, DuBois, Pennsylvania 15801. The documents to be produced (including all pages and attachments) shall include but not be limited to: all listing agreements, sales agreements, brokerage agreements, real estate appraisals performed on subject property, memorandums, notes from discussions with Eleanor G. Graff, her agents and/or attorneys-in-fact, correspondence to and from Eleanor G. Graff, her agents, attorneys-in-fact, and/or legal representatives, notes from inspection appearances and viewings, photographs of premises, videos of premises, mortgage applications of any prospective buyers, responses from lenders to mortgage application of prospective buyers, disclosure statements of

seller, her agents, attorneys-in-fact and/or legal representative, copies of power of attorneys or court order pertaining to Eleanor G. Graff and other written material in your possession pertaining to said real estate. Said documents to be produced or are to be provided to Andrew P. Gates, Esquire, 2 North Front Street, P. O. Box 846, Clearfield, Pennsylvania 16830.

You may deliver or mail legible copies of the documents or produce things requested by this Subpoena, together with the Certificate of Compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this Subpoena within twenty (20) days after its service, the party serving the Subpoena may seek a Court Order compelling you to comply with it.

This Subpoena was issued at the request of the following person: Andrew P. Gates, Esquire, Pennsylvania Bar Identification Number: 36604, Address: 2 North Front Street, P. O. Box 846, Clearfield, Pennsylvania 16830; telephone number (814) 765-1766, Attorney for Plaintiffs/Petitioners, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, JOHN E. FARR, CATHERINE E. FARR, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON.

BY THE COURT:

Date: \_\_\_\_\_

\_\_\_\_\_  
Prothonotary

(SEAL)

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNA.  
No. 02-760-CD  
EQUITY ACTION

TIMOTHY J. FITZWATER, et al

-vs-

CITY OF DUBOIS, et al

CERTIFICATE PREREQUISITE  
TO SERVICE OF A SUBPOENA  
PURSUANT TO RULE 4009.22

FILED

JUL 11 2003  
071058 a.m.  
William A. Shaw  
Prothonotary  
m cc

LAW OFFICES  
GATES & SEAMAN  
2 NORTH FRONT STREET  
P.O. BOX 846  
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. FITZWATER,  
JAY FAUST, SALLY FAUST, LAWRENCE M. WAY,  
AMY L. WAY, DANIEL LEE, EVA LEE, ALFRED  
WILLIAM WILSON SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR and CATHERINE  
E. FARR,

Plaintiffs

-vs-

CITY OF DUBOIS and ELEANOR G. GRAFF, her  
successors and/or assigns claiming any  
interest in the described property,

Defendant

No. 02-760-CD

In Equity

FILED

JUL 30 2003

William A. Shaw  
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

COMMONWEALTH OF PENNSYLVANIA

:  
:SS.  
:

COUNTY OF CLEARFIELD

ANDREW P. GATES, ESQUIRE, of Gates & Seaman, being duly sworn according to law, states that he, on July 24, 2003, mailed, by regular U. S. Mail, postage prepaid, a certified copy of Plaintiffs' Preliminary Objections to Defendant City of DuBois's Amended Answer, Amended New Matter and Amended Counterclaim as follows:

Toni M. Cherry, Esquire  
P. O. Box 505  
DuBois, PA 15801

Peter F. Smith, Esquire  
P. O. Box 130  
Clearfield, PA 16830

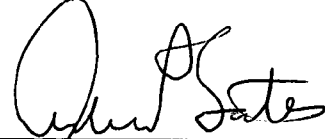
Mr. and Mrs. Daniel Lee  
206 East Washington Avenue  
DuBois, PA 15801

Robert Curley  
155 Schonwalder Road  
Clearfield, PA 16830

David Meholick, Court Administrator  
Clearfield County Courthouse  
Clearfield, Pennsylvania 16830

GATES & SEAMAN

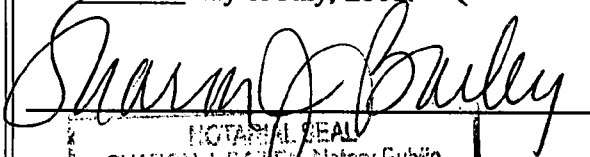
By:



Andrew P. Gates, Esquire

Sworn to and subscribed before me

this 29th day of July, 2003.



NOTARIAL SEAL  
SHARON J. BAILEY, Notary Public  
Bradford Twp., Clearfield County  
My Commission Expires June 23, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, : No. 02-760-CD  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, : Type of Case: Equity  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs :

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other persons :  
claiming any interest in the described :  
property, :  
Defendants :

**FILED**  
AUG 08 2003  
William A. Shaw  
Prothonotary/Clerk of Courts


**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendant Eleanor G. Graff, certify that I sent the original of  
**DEFENDANT ELEANOR G. GRAFF'S ANSWER TO PLAINTIFFS' REQUEST FOR**  
**PRODUCTION OF DOCUMENTS** by hand delivery to the Attorney for the Plaintiffs at the  
following address:

Andrew P. Gates, Esquire  
Gates & Seaman  
Two North Front Street  
Clearfield, PA 16830

Respectfully submitted,

Date: August 8, 2003

  
Peter F. Smith, Esquire  
Attorney for Defendant, Eleanor G. Graff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, : No. 02-760-CD  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, : Type of Case: Equity  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs :

vs. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other persons :  
claiming any interest in the described :  
property, :  
Defendants :

FILED

AUG 14 2003

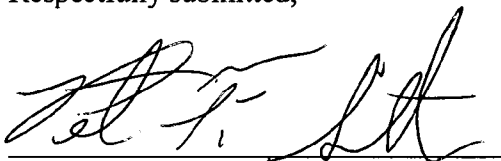
William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendant Eleanor G. Graff, certify that I sent the original  
**SUPPLEMENT TO DEFENDANT ELEANOR G. GRAFF'S FIRST PRODUCTION OF**  
**DOCUMENTS** to request number 8 by hand delivery to the Attorney for the Plaintiffs at the  
following address:

Andrew P. Gates, Esquire  
Gates & Seaman  
Two North Front Street  
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendant, Eleanor G. Graff

Date: August 13, 2003



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,	:	No. 02-760-CD
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	Type of Case: Equity
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
Plaintiffs	:	
vs.	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other persons	:	
claiming any interest in the described	:	
property,	:	
Defendants	:	

**FILED**  
**AUG 26 2003**  
William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendant Eleanor G. Graff, certify that I sent the original of **DEFENDANT ELEANOR G. GRAFF'S ANSWERS TO PLAINTIFFS' INTERROGATORIES** by hand delivery to Attorney for Plaintiffs and a true and correct copy of said Answers by U.S. First Class Mail, Postage Prepaid on August 25, 2003 to the following:

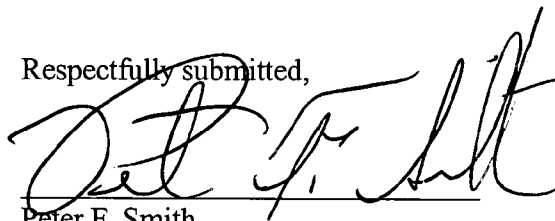
HAND DELIVER  
Andrew P. Gates, Esquire  
GATES & SEAMAN  
Two North Front Street  
Clearfield, PA 16830

Toni M. Cherry, Esquire  
Attorney for City of DuBois  
GLEASON CHERRY & CHERRY  
P. O. Box 505  
DuBois, PA 15801

Daniel Lee  
Eva Lee  
206 East Washington Ave.  
DuBois, PA 15801

Robert Curley  
155 Schonwalder Road  
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith,  
Attorney for Eleanor G. Graff

Date: August 25, 2003

CF

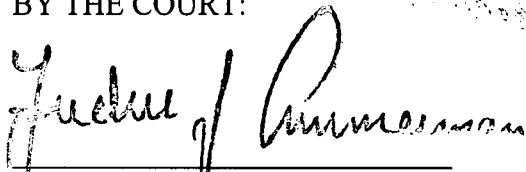
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, al	:
	:
vs.	: No. 02-760-CD
	:
CITY OF DUBOIS, al	:

**ORDER**

AND NOW, this 10 day of September, 2003, it is the ORDER of the Court that Hearing on Plaintiffs Preliminary Objections filed by Attorney Gates on July 24, 2003 and Plaintiffs Lee filed on September 2, 2003 has been scheduled for **Monday, October 13, 2003 at 3:00 P.M.** in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
Judge

**FILED**

SEP 10 2003

William A. Shaw  
Prothonotary

[illegible]

William A. Shaw  
Prothonotary

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER,  
LISA A. FITZWATER, JAY FAUST,  
SALLY FAUST, LAWRENCE M. WAY,  
AMY L. WAY, DANIEL LEE,  
EVA LEE, ALFRED WILLIAM WILSON,  
SHARON ELIZABETH WILSON,  
ROBERT CURLEY, JOHN E. FARR,  
and CATHERINE E. FARR,  
Plaintiffs

vs.

CITY OF DUBOIS and  
ELEANOR G. GRAFF, her successors  
and/or assigns and all other persons  
claiming any interest in the described  
property,

Defendants

No. 02-760-CD

Type of Case: Equity

**FILED**

SEP 17 2003

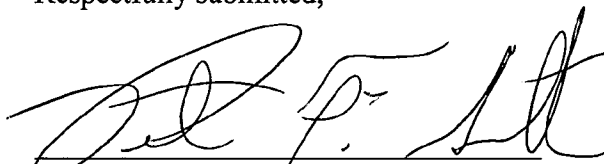
William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendant Eleanor G. Graff, certify that I sent the original  
**SECOND SUPPLEMENT TO DEFENDANT ELEANOR G. GRAFF'S FIRST**  
**PRODUCTION OF DOCUMENTS** numbered 28 through 35 by hand delivery to the Attorney  
for the Plaintiffs at the following address:

Andrew P. Gates, Esquire  
Gates & Seaman  
Two North Front Street  
Clearfield, PA 16830

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendant, Eleanor G. Graff

Date: September 16, 2003

cc: Toni M. Cherry, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs :

vs. :

NO. 02 - 760 - C.D. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**REPLY TO AMENDED  
NEW MATTER AND  
ANSWER TO AMENDED  
COUNTERCLAIM**

Filed on behalf of  
Plaintiff

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

**FILED**

**SEP 30 2003**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER,	:	
LISA A. FITZWATER, JAY FAUST,	:	
SALLY FAUST, LAWRENCE M. WAY,	:	
AMY L. WAY, DANIEL LEE,	:	
EVA LEE, ALFRED WILLIAM WILSON,	:	
SHARON ELIZABETH WILSON,	:	
ROBERT CURLEY, JOHN E. FARR,	:	
and CATHERINE E. FARR,	:	
	:	
Plaintiffs	:	
vs.	:	NO. 02 – 760 – C.D.
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF, her successors	:	
and/or assigns and all other	:	
persons claiming any interest in the	:	
described property,	:	
	:	
Defendants	:	

**REPLY TO AMENDED NEW MATTER**

NOW COMES, Robert Curley, Plaintiff above named, and by his Attorneys, Belin & Kubista, makes his Reply to the Amended New Matter of the Defendant City of DuBois as follows:

53. No response required.
54. Plaintiff Curley has no knowledge as the averments set forth in the Amended New Matter filed by the City of DuBois and thus the same are denied. By way of further response, Plaintiff Curley avers that he has not been a resident of the City of DuBois since September of 2002, and that at no time relevant herein was he a property owner in the City of DuBois. Plaintiff Curley has a severe hearing impairment which precluded his ability to understand the significance and

implications of his execution of the Complaint in this matter prepared and filed by Plaintiffs Fitzwater. The understanding of Plaintiff Curley was that he was being asked to join in a petition to be presented to the City of DuBois, and not a civil complaint to be filed in the Court of Common Pleas for which he would require legal counsel and for which he could possibly incur liability.

- 55. See Response to Paragraph 54 above.
- 56. See Response to Paragraph 54 above.
- 57. See Response to Paragraph 54 above.
- 58. See Response to Paragraph 54 above.
- 59. See Response to Paragraph 54 above.
- 60. See Response to Paragraph 54 above.
- 61. See Response to Paragraph 54 above.
- 62. See Response to Paragraph 54 above.
- 63. See Response to Paragraph 54 above.
- 64. See Response to Paragraph 54 above.
- 65. See Response to Paragraph 54 above.
- 66. See Response to Paragraph 54 above.
- 67. See Response to Paragraph 54 above.
- 68. See Response to Paragraph 54 above.
- 69. See Response to Paragraph 54 above.
- 70. See Response to Paragraph 54 above.
- 71. See Response to Paragraph 54 above.
- 72. See Response to Paragraph 54 above.



- 73. See Response to Paragraph 54 above.
- 74. See Response to Paragraph 54 above.
- 75. See Response to Paragraph 54 above.
- 76. See Response to Paragraph 54 above.
- 77. See Response to Paragraph 54 above.
- 78. See Response to Paragraph 54 above.
- 79. See Response to Paragraph 54 above.
- 80. See Response to Paragraph 54 above.
- 81. See Response to Paragraph 54 above.
- 82. See Response to Paragraph 54 above.

WHEREFORE, Plaintiff Robert Curley requests that he be dismissed as a party to the above captioned matter.

**ANSWER TO AMENDED COUNTERCLAIM**

NOW COMES, Robert Curley, Plaintiff above named, and by his Attorneys, Belin & Kubista, makes his Answer to the Amended Counterclaim of Defendant the City of DuBois as follows:

- 83. No response required.
- 84. Plaintiff Robert Curley is without knowledge as to the averments of the Defendant's Amended Counterclaim, and denies such averments. By way of further response, Plaintiff Robert Curley incorporates herein his Reply to New Matter as if the same were set forth at length.
- 85. See Answer to Paragraph 84 above.
- 86. See Answer to Paragraph 84 above.

- 87. See Answer to Paragraph 84 above.
- 88. See Answer to Paragraph 84 above.
- 89. See Answer to Paragraph 84 above.
- 90. See Answer to Paragraph 84 above.
- 91. See Answer to Paragraph 84 above.

WHEREFORE, Plaintiff Robert Curley requests that the Amended Counterclaim of Defendant the City of DuBois be dismissed as to him, and further requests that he be permitted to withdraw as a party to this action.

Respectfully submitted,


BELIN & KUBISTA

A handwritten signature in black ink, appearing to read 'John R. Ryan', is written over a horizontal line.

John R. Ryan

Attorney for Plaintiff Robert Curley

I verify that the statements made in this Reply to Amended New Matter and Answer to Amended Counterclaim are true and correct. I understand that false statements herein are made subject to the penalties of Pa. C.S. 4904, relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Robert Curley

BELIN & KUBISTA  
ATTORNEYS AT LAW  
15 NORTH FRONT STREET  
P. O. BOX 1  
CLEARFIELD, PENNSYLVANIA 16830

FILED *ccc*

*2/11/18*  
SEP 30 2003

*Atty Ryan*

*William A. Shaw*  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs :

vs. :

NO. 02 - 760 - C.D.

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**REPLY TO AMENDED  
NEW MATTER AND  
ANSWER TO AMENDED  
COUNTERCLAIM**

Filed on behalf of  
Plaintiff

Counsel of Record for  
this Party:

John R. Ryan  
Attorney-At-Law

Pa. I.D. 38739

BELIN & KUBISTA  
15 N. Front Street  
P.O. Box 1  
Clearfield, PA 16830  
(814) 765-8972

**FILED**

SEP 30 2003

William A. Grier  
Prothonotary Clearfield County

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
EQUITY ACTION

TIMOTHY J. FITZWATER, :  
LISA A. FITZWATER, JAY FAUST, :  
SALLY FAUST, LAWRENCE M. WAY, :  
AMY L. WAY, DANIEL LEE, :  
EVA LEE, ALFRED WILLIAM WILSON, :  
SHARON ELIZABETH WILSON, :  
ROBERT CURLEY, JOHN E. FARR, :  
and CATHERINE E. FARR, :  
Plaintiffs :

vs. :

NO. 02 – 760 – C.D. :

CITY OF DUBOIS and :  
ELEANOR G. GRAFF, her successors :  
and/or assigns and all other :  
persons claiming any interest in the :  
described property, :  
Defendants :

**REPLY TO AMENDED NEW MATTER**

NOW COMES, Robert Curley, Plaintiff above named, and by his Attorneys, Belin & Kubista, makes his Reply to the Amended New Matter of Defendant Eleanor G. Graff as follows:

53. No response required.
54. Plaintiff Curley is without any knowledge as to the claims asserted by the other Plaintiffs against Defendant Graff. Plaintiff Curley has a severe hearing impairment and at the time he signed the Complaint he believed that he was signing a petition to be presented to the DuBois City Council. At no time did Plaintiff Curley wish to or intend to join in any type of litigation, and as a matter of law, Plaintiff Curley had no standing to assert any claims as at no time

relevant herein was he a property owner in the City of DuBois. At no time was Plaintiff Curley made aware that by signing the document presented to him by Plaintiffs Fitzwater he was joining litigation that would require him to obtain the services of counsel and that could potentially result in liability to him.

55. Plaintiff Curley is without any knowledge as to the claims asserted by the other Plaintiffs against Defendant Graff. Plaintiff Curley has a severe hearing impairment and at the time he signed the Complaint he believed that he was signing a petition to be presented to the DuBois City Council. At no time did Plaintiff Curley wish to or intend to join in any type of litigation, and as a matter of law, Plaintiff Curley had no standing to assert any claims as at no time relevant herein was he a property owner in the City of DuBois.

WHEREFORE, Plaintiff Robert Curley respectfully requests that he be permitted to withdraw as a party to the above captioned action.

**ANSWER TO AMENDED COUNTERCLAIM**

NOW COMES, Robert Curley, Plaintiff above named, and by his Attorneys, Belin, makes his Answer to the Amended Counterclaim of Defendant Graff as follows:

56. No response required.
57. Plaintiff Curley is without any knowledge as to any contract for the sale of the property owned by Defendant Graff. At the time of the filing of Complaint, Plaintiff Curley was a tenant residing at 144 East Long Avenue in DuBois. Since September of 2002 he has resided in Clearfield, Pennsylvania. As a matter of law, it is believed and therefore averred that Plaintiff Curley at no time relevant herein had standing to join in this action, and further at no time did Plaintiff

Curley intend to join in litigation against either Defendant. At no time did Plaintiff Curley take any action as alleged by Defendant Graff, and his sole involvement in this matter was that he signed the complaint prepared by Plaintiffs Fitzwater without understanding the significance of this action.

58. Denied for the reasons set forth at Paragraph 57.

59. Denied for the reasons set forth at Paragraph 57.

60. Denied for the reasons set forth at Paragraph 57.

61. Denied for the reasons set forth at Paragraph 57.

62. Denied for the reasons set forth at Paragraph 57.

63. Denied for the reasons set forth at Paragraph 57.

64. Denied for the reasons set forth at Paragraph 57.

65. Denied for the reasons set forth at Paragraph 57.

66. Denied for the reasons set forth at Paragraph 57.

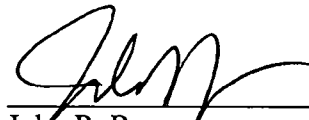
67. Denied for the reasons set forth at Paragraph 57.

68. Denied for the reasons set forth at Paragraph 57.

WHEREFORE, Plaintiff Robert Curley requests that Defendant's Counterclaim as against him be dismissed, and that he be permitted to withdraw as a party to this action.

Respectfully submitted,

BELIN & KUBISTA

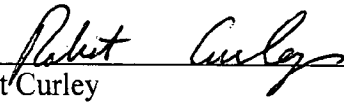


---

John R. Ryan  
Attorney for Plaintiff Robert Curley



I verify that the statements made in this Reply to Amended New Matter and Answer to Amended Counterclaim are true and correct. I understand that false statements herein are made subject to the penalties of Pa. C.S. 4904, relating to unsworn falsification to authorities.

  
Robert Curley

BELIN & KUBISTA  
ATTORNEYS AT LAW  
15 NORTH FRONT STREET  
P.O. BOX 1  
CLEARFIELD, PENNSYLVANIA 16830

FILED *lece*  
*of 11/19/04*  
SEP 30 2003 *Att. Bryan*  
*W. A. Shaw*  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

**FILED**

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY L. :  
WAY, DANIEL LEE, EVA LEE, ALFRED :  
WILLIAM WILSON, SHARON ELIZABETH :  
WILSON, ROBERT CURLEY, JOHN E. :  
FARR and CATHERINE E. FARR :

OCT 08 2003

William A. Shaw  
Prothonotary

VS. :

NO. 02-760-CD

CITY OF DUBOIS and :  
ELEANOR G. GRAFF :

O R D E R

NOW, this 8th day of October, 2003, relative the Preliminary Objections filed on June 9, 2003, by Plaintiffs Wilson to Defendant Graff's Amended Answer, New Matter and Counterclaim; with the Court noting that the said Preliminary Objections are identical to those filed by the other Plaintiffs as disposed of in the Court's Order of October 3, 2003, it is the ORDER of this Court that the said Preliminary Objections filed by Plaintiffs Wilson be dismissed and granted to the same extent as described in the October 3, 2003, Order.

The Court further noting that the Plaintiffs filed Preliminary Objections to the Defendant City of DuBois Answer, New Matter and Counterclaim. The Court thereafter received Plaintiffs' brief concerning the same. The City of DuBois filed an Amended Pleading negating the Preliminary Objections. Plaintiffs thereafter filed further Preliminary Objections to

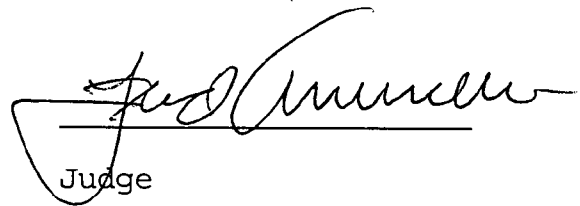
the Amended Pleading, the majority of which are identical to those previously filed. Therefore, it is the ORDER of this Court as follows:

1. Oral argument scheduled on the Plaintiffs' Preliminary Objections for Monday, October 13, 2003, is hereby cancelled.

2. Plaintiffs shall have no more than ten (10) days from this date in which to submit to the Court further brief on those Preliminary Objections not previously briefed.

3. The City of DuBois will have no more than thirty (30) days from this date in which to submit its brief on the Plaintiffs' Preliminary Objections to its Amended Pleading.

BY THE COURT,



Judge

**FILED**

NOV 21 3 39 PM '03

OCT 08 2003

*Cherry Waterbury & Lee, Eva & Davies  
P. Smith*

William A. Shaw  
Prothonotary

WILLIAM A. SHAW  
PROTHONOTARY  
and CLERK of COURTS  
P.O. BOX 549  
CLEARFIELD, PENNSYLVANIA 16830

FILED

*mailed*  
*m/11.11.03 to Piff in*  
OCT 15 2003 *error - re-mailed*  
*to Atty Ryan*

William A. Shaw  
Prothonotary/Clerk of Courts

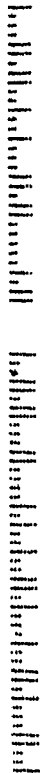


Robert Curley  
144 E. Long Ave.  
DuBois, PA 15801



CURL144 159012012 1902 06 10/11/03  
FORWARD TIME EXP RTN TO SEND  
CURLEY, ROBERT  
155 SCHONWALDER RD  
CLEARFIELD PA 16830-0229  
RETURN TO SENDER

16830/0549  
10801-0229



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

OCT 8 2003

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY L. :  
WAY, DANIEL LEE, EVA LEE, ALFRED :  
WILLIAM WILSON, SHARON ELIZABETH :  
WILSON, ROBERT CURLEY, JOHN E. :  
FARR and CATHERINE E. FARR :

Attest.

*L. M. L. R.*  
Prothonotary/  
Clerk of Courts

VS. :

NO. 02-760-CD

CITY OF DUBOIS and :  
ELEANOR G. GRAFF :

O R D E R

NOW, this 8th day of October, 2003, relative the Preliminary Objections filed on June 9, 2003, by Plaintiffs Wilson to Defendant Graff's Amended Answer, New Matter and Counterclaim; with the Court noting that the said Preliminary Objections are identical to those filed by the other Plaintiffs as disposed of in the Court's Order of October 3, 2003, it is the ORDER of this Court that the said Preliminary Objections filed by Plaintiffs Wilson be dismissed and granted to the same extent as described in the October 3, 2003, Order.

The Court further noting that the Plaintiffs filed Preliminary Objections to the Defendant City of DuBois Answer, New Matter and Counterclaim. The Court thereafter received Plaintiffs' brief concerning the same. The City of DuBois filed an Amended Pleading negating the Preliminary Objections. Plaintiffs thereafter filed further Preliminary Objections to

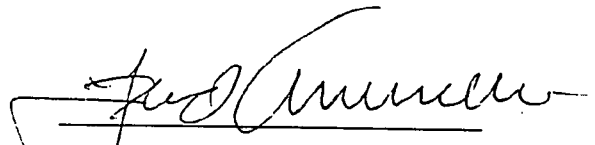
the Amended Pleading, the majority of which are identical to those previously filed. Therefore, it is the ORDER of this Court as follows:

1. Oral argument scheduled on the Plaintiffs' Preliminary Objections for Monday, October 13, 2003, is hereby cancelled.

2. Plaintiffs shall have no more than ten (10) days from this date in which to submit to the Court further brief on those Preliminary Objections not previously briefed.

3. The City of DuBois will have no more than thirty (30) days from this date in which to submit its brief on the Plaintiffs' Preliminary Objections to its Amended Pleading.

BY THE COURT,

  
Judge



WILLIAM A. SHAW  
PROTHONOTARY  
and CLERK of COURTS  
P.O. BOX 549  
CLEARFIELD, PENNSYLVANIA 16830

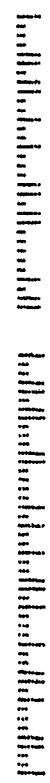
FILED *mailed to Piff*  
*11-11-03* *in error*  
OCT 15 2003 *re-mailed to*  
*Atty Ryan* *GRD*

William A. Shaw  
Prothonotary/Clerk of Courts

Robert Curley  
144 E. Long Ave.  
DuBois, PA 15801

CURL 144 158012012 1902 05 10/11/03  
FORWARD TIME EXP RTN TO SEND  
CURLEY, ROBERT  
155 SCHONWALDER RD  
CLEARFIELD PA 16830-6229  
RETURN TO SENDER

16830/0343  
15801-2123



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY L. :  
WAY, DANIEL LEE, EVA LEE, ALFRED :  
WILLIAM WILSON, SHARON ELIZABETH :  
WILSON, ROBERT CURLEY, JOHN E. :  
FARR and CATHERINE E. FARR :  
VS. : NO. 02-760-CD  
CITY OF DUBOIS and :  
ELEANOR G. GRAFF :

O R D E R

NOW, this 3rd day of October, 2003, the Court issues the following Order in regard to the Preliminary Objections as described below:

1. On May 29, 2003, Defendant Eleanor G. Graff filed Preliminary Objections to Plaintiff's second set of Preliminary Objections. However, in her brief, Defendant Graff indicates she no longer wishes to proceed with the same. Therefore, it is the ORDER of this Court that the said Preliminary Objections filed on behalf of Defendant Graff are considered withdrawn.

2. In regard to the Preliminary Objections filed on May 16, 2003, by Plaintiffs Fitzwater, Faust, Way and Farr to Defendant Graff's Amended Answer, New Matter and Counterclaim, it is the ORDER of this Court as follows:

a) Preliminary Objections I, II, III and VI are

dismissed;

b) Plaintiffs' Preliminary Objection IV is granted to the extent that, within no more than twenty (20) days, Defendant Graff will file with the record a complete copy of the Sales Agreement containing pages 3 and 5 which were previously not attached;

c) Plaintiffs' Preliminary Objection V is granted to the extent that Defendant Graff shall have no more than twenty (20) days to file an amended pleadings supplementing her request for damages relative specific amounts spent on lawn care and maintenance following the filing of the original complaint on May 14, 2002.

BY THE COURT,

/s/ Fredric J. Ammerman

Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

OCT 06 2003

Attest.

*William L. Brown*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TIMOTHY J. FITZWATER, LISA A.	:	
FITZWATER, JAY FAUST, SALLY	:	
FAUST, LAWRENCE M. WAY, AMY L.	:	
WAY, DANIEL LEE, EVA LEE, ALFRED:	:	
WILLIAM WILSON, SHARON ELIZABETH:	:	
WILSON, ROBERT CURLEY, JOHN E.	:	
FARR and CATHERINE E. FARR	:	
	:	
VS.	:	NO. 02-760-CD
	:	
CITY OF DUBOIS and	:	
ELEANOR G. GRAFF	:	

O R D E R

NOW, this 3rd day of October, 2003, the Court issues the following Order in regard to the Preliminary Objections as described below:

1. On May 29, 2003, Defendant Eleanor G. Graff filed Preliminary Objections to Plaintiff's second set of Preliminary Objections. However, in her brief, Defendant Graff indicates she no longer wishes to proceed with the same. Therefore, it is the ORDER of this Court that the said Preliminary Objections filed on behalf of Defendant Graff are considered withdrawn.

2. In regard to the Preliminary Objections filed on May 16, 2003, by Plaintiffs Fitzwater, Faust, Way and Farr to Defendant Graff's Amended Answer, New Matter and Counterclaim, it is the ORDER of this Court as follows:

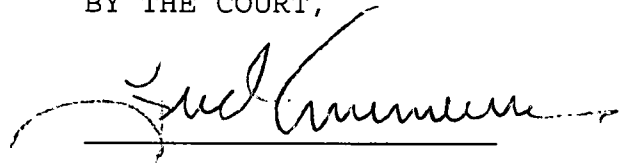
a) Preliminary Objections I, II, III and VI are

dismissed;

b) Plaintiffs' Preliminary Objection IV is granted to the extent that, within no more than twenty (20) days, Defendant Graff will file with the record a complete copy of the Sales Agreement containing pages 3 and 5 which were previously not attached;

c) Plaintiffs' Preliminary Objection V is granted to the extent that Defendant Graff shall have no more than twenty (20) days to file an amended pleadings supplementing her request for damages relative specific amounts spent on lawn care and maintenance following the filing of the original complaint on May 14, 2002.

BY THE COURT,

  
Judge

**FILED**

OCT 06 2003

William A. Shaw  
Prothonotary

**FILED**

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ICC to

OCT 06 2003

Atty + Cher, P Smith  
- Andy Hates, J Ryan,  
Patty Curly, & Lee

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY L. :  
WAY, DANIEL LEE, EVA LEE, :  
ALFRED WILLIAM WILSON, SHARON :  
ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR, and :  
CATHERINE E. FARR, :  
Plaintiffs :

vs. :

CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest :  
in the described property, :  
Defendant :

No. 02- 760 -CD

Type of Case: EQUITY

Type of Pleading: PRAECIPE TO  
MARK CLAIMS SETTLED &  
DISCONTINUED

Filed on behalf of:  
Plaintiffs,  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy  
L. Way, John E. Farr,  
Catherine E. Farr, Alfred W.  
Wilson and Sharon Elizabeth  
Wilson

Counsel of Record for this  
Party:  
Andrew P. Gates, Esquire

Supreme Court No.: 36604

GATES & SEAMAN  
Attorneys at law  
Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

FILED

NOV 18 2003

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL: :  
LEE, EVA LEE, ALFRED WILLIAM WILSON: :  
SHARON ELIZABETH WILSON, ROBERT : :  
CURLEY, JOHN E. FARR and CATHERINE : :  
E. FARR, Plaintiffs : No. 02-760-CD


-vs-

In Equity

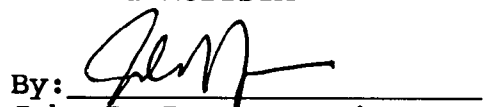
CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest in :  
the described property, Defendants :


PRAECIPE TO MARK CLAIMS SETTLED AND DISCONTINUED

AND NOW COME Plaintiffs, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, JOHN E. FARR, CATHERINE E. FARR, ALFRED WILLIAM WILSON, SHARON ELIZABETH WILSON and ROBERT CURLEY, and Defendant, ELEANOR G. GRAFF, who hereby, through counsel, "settle, discontinue and end, with prejudice, all claims asserted against each other in the within proceedings", and direct the Prothonotary of Clearfield County to mark the docket accordingly.

  
Peter F. Smith, Esquire  
Attorney for ELEANOR G. GRAFF  
Date: 10-24-03

BELIN & KUBISTA

By:   
John R. Ryan, Esquire  
Attorney for ROBERT CURLEY  
Date: 10/27/03

GATES & SEAMAN  
By:   
Andrew P. Gates, Esquire  
Attorney for Plaintiffs,  
TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, JOHN E. FARR, CATHERINE E. FARR, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON  
Date: October 24, 2003



FILED

O 1: 34 BA 1CC Atty Smith  
1CC Atty Ateles  
copy & CA

NOV 18 2003



William A. Shaw  
Prothonotary

**IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA**

**CIVIL DIVISION**

**Timothy J. Fitzwater  
Lisa A. Fitzwater  
Jay Faust  
Sally Faust  
Lawrence L. Way  
Amy M. Way  
Daniel Lee  
Eva Lee  
Alfred William Wilson  
Sharon Elizabeth Wilson  
Robert Curley  
John E. Farr  
Catherine E. Farr  
Vs.  
City of DuBois  
Eleanor G. Graff**

**No. 2002-00760-CD**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on November 18, 2003, marked:

Settled, Discontinued and Ended

Record costs in the sum of \$89.00 have been paid in full by Attorney.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 18th day of November A.D. 2003.



---

William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY :  
FAUST, LAWRENCE M. WAY, AMY L. :  
WAY, DANIEL LEE, EVA LEE, :  
ALFRED WILLIAM WILSON, SHARON :  
ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR, and :  
CATHERINE E. FARR, :  
Plaintiffs :

vs. :

CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest :  
in the described property, :  
Defendant :

No. 02- 760 -CD

Type of Case: EQUITY

Type of Pleading: PRAECIPE TO  
MARK CLAIMS WITHDRAWN &  
DISCONTINUED

Filed on behalf of:  
Plaintiffs,  
Timothy J. Fitzwater, Lisa A.  
Fitzwater, Jay Faust, Sally  
Faust, Lawrence M. Way, Amy  
L. Way, John E. Farr,  
Catherine E. Farr, Alfred W.  
Wilson and Sharon Elizabeth  
Wilson

Counsel of Record for this  
Party:  
Andrew P. Gates, Esquire

Supreme Court No.: 36604

GATES & SEAMAN  
Attorneys at law  
Two North Front Street  
P. O. Box 846  
Clearfield, PA 16830  
(814) 765-1766

FILED

DEC 11 2003

William A. Shaw  
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

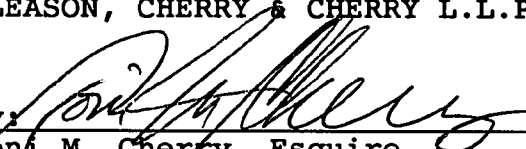
TIMOTHY J. FITZWATER, LISA A. :  
FITZWATER, JAY FAUST, SALLY FAUST, :  
LAWRENCE M. WAY, AMY L. WAY, DANIEL: :  
LEE, EVA LEE, ALFRED WILLIAM WILSON: :  
SHARON ELIZABETH WILSON, ROBERT :  
CURLEY, JOHN E. FARR and CATHERINE :  
E. FARR, Plaintiffs : No. 02-760-CD  
:  
-vs- : In Equity  
:  
CITY OF DUBOIS and ELEANOR G. :  
GRAFF, her successors and/or :  
assigns claiming any interest in :  
the described property, Defendants :

PRAECIPE TO MARK CLAIMS WITHDRAWN AND DISCONTINUED

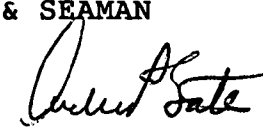
AND NOW COME Plaintiffs, TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, JOHN E. FARR, CATHERINE E. FARR, ALFRED WILLIAM WILSON, SHARON ELIZABETH WILSON and ROBERT CURLEY, and Defendant, CITY of DuBOIS, which hereby, through counsel, do "withdraw, discontinue and end, with prejudice, all claims asserted against each other in the within proceedings", and direct the Prothonotary of Clearfield County to mark the docket accordingly.

GLEASON, CHERRY & CHERRY L.L.P.

GATES & SEAMAN

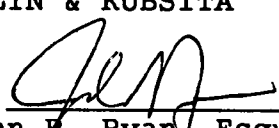
By:   
Tom M. Cherry, Esquire  
Solicitor for CITY of DuBOIS

Date: December 8, 2003

By:   
Andrew P. Gates, Esquire  
Attorney for Plaintiffs,  
TIMOTHY J. FITZWATER, LISA A. FITZWATER, JAY FAUST, SALLY FAUST, LAWRENCE M. WAY, AMY L. WAY, JOHN E. FARR, CATHERINE E. FARR, ALFRED WILLIAM WILSON and SHARON ELIZABETH WILSON

Date: November 21, 2003

BELIN & KUBSITA

By:   
John R. Ryan, Esquire  
Attorney for ROBERT CURLEY

Date: 12/10/03

FILED No CC

01/23/2003 2 Certificate of Disc. to Atty Gates  
DEC 11 2003 copy to CIA

William A. Shaw  
Prothonotary Clerk of Courts  
12/9/03

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Timothy J. Fitzwater, Lisa A. Fitzwater,  
Jay Faust, Sally Faust, Lawrence L. Way,  
Amy M. Way, Daniel Lee, Eva Lee,  
Alfred William Wilson, Sharon Elizabeth Wilson,  
Robert Curley, John E. Farr, Catherine E. Farr

Vs.

No. 2002-00760-CD

City of DuBois, and  
Eleanor G. Graff, her successors and/or  
assigns claiming any interest in the  
described property

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County  
and Commonwealth aforesaid do hereby certify that the above case was on December 11,  
2003, marked:

**Withdrawn, Discontinued, and Ended with prejudice all claims asserted by  
Timothy J. Fitzwater, Lisa A. Fitzwater, Jay Faust, Sally Faust, Lawrence L. Way,  
Amy M. Way, John E. Farr, Catherine E. Farr, Alfred William Wilson, Sharon  
Elizabeth Wilson, and Robert Curley against the City of DuBois**

Record costs in the sum of \$80.00 have been paid in full by Timothy J. Fitzwater.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at  
Clearfield, Clearfield County, Pennsylvania this 11th day of December A.D. 2003.

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William A. Shaw, Prothonotary